

94979

211

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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 99CV0772

5 KENNETH WYNDER, -----X
6 Plaintiff,
7 - against -
8 JAMES MCMAHON, DAVID SPAHL, ROBERT JONES,
9 LOUIS B. BARBARIA, CRAIG MASTERSON, JOSH
10 KEATS, Individually, and JOHN DOE
11 employees One through Ten of the NEW YORK
12 STATE POLICE who violated the
13 Constitutional Rights of Plaintiff while
14 operating under Color of law or direction
15 from named Defendants,
16 Defendants.

17 -----X
18 August 15, 2005
19 11:25 a.m.

20

21

22 Continued Deposition of KENNETH
23 N. WYNDER, JR., taken by the Defendants,
24 pursuant to Adjournment, held at the
25 offices of New York State Attorney
General, 120 Broadway, New York, New York,
before Tammy O'Berg, a Shorthand Reporter
and Notary Public of the State of New
York.

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212

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94979

5 which is being continued from Friday.

6 K E N N E T H N. W Y N D E R, J R.,

7 having been previously duly sworn,

8 testified further as follows:

9 CONTINUED EXAMINATION

10 BY MS. ODESSKY:

11 Q. Good morning, Mr. Wynder.

12 A. Good morning.

13 MS. ODESSKY: I note for the
14 record the time is now 11:25.

15 BY MS. ODESSKY:

16 Q. Mr. Wynder, when we met on
17 Friday, we were talking about a number of
18 incidents. One particular incident we
19 spoke about was Captain Spahl's
20 complaining that you did not salute him
21 and that occurred at the Hawthorne
22 barracks; is that correct?

23 A. Correct.

24 Q. To the best of your knowledge,
25 was that one particular occasion that he

214

1 WYNDER

2 was complaining about or more than one
3 occasion when you did not salute him?

4 A. He just made the complaint, and
5 when Internal Affairs came down to
6 interview me, which was against rules and
7 regulations, it turned out to be that he

94979

8 claims it was five incidents.

9 Q. Five incidents.

10 what was your recollection of
11 how many incidents it was in which you did
12 not salute him?

13 A. Probably about that.

14 Q. You would agree with him that
15 there were about five occasions?

16 A. Well, five occasions that he
17 thought I didn't salute him.

18 First of all, under rules and
19 regs, paramilitary, you did not salute
20 indoors.

21 Q. Let me ask you, before we go
22 into that, Mr. Wynder, on how many
23 occasions do you recall that you saw
24 Captain Spahl that you did not salute him?

25 A. Only one that I can recall was

215

1 WYNDER

2 one.

3 Q. only one.

4 Do you remember what was
5 happening during that time?

6 A. Yes, I do.

7 Q. what was that?

8 A. We were all in the squad room
9 and the captain came in and one person
10 stood up, everybody stood at attention and

94979
11 stopped what they were doing and one
12 person saluted him.
13 Q. Who was that person?
14 A. I don't recall. It was one of
15 the troopers in the room.
16 Q. How many other troopers were
17 there in the room who did not salute?
18 A. Probably another five or six
19 that did not salute.
20 Q. Is it five or six besides
21 yourself?
22 A. Yes.
23 Q. That's the only incident that
24 you can recall in which you did not salute
25 Captain Spahl?

□

216

1 WYNDER
2 A. Correct.
3 Q. What were you doing at the time
4 when Captain Spahl came into the squad
5 room and you did not salute him?
6 A. I was doing paperwork.
7 Q. Why did you not salute him at
8 that time?
9 A. Protocol is when an officer
10 enters the room, one person can salute for
11 all of them. It's a protocol that's used
12 throughout the State Police. Protocol
13 that was issued in the Academy.

94979

14 When I was as instructor, one of
15 the recruits would stand and salute.

16 Again, you did not salute indoors.

17 Q. Is that written down in one of
18 the State Police policies or procedures?

19 A. Well, it's military code. State
20 Police is military.

21 Q. But if I looked at the State
22 Police rules and regulations, would I find
23 in there that you do not salute someone
24 indoors?

25 A. No, what you would find is we're

□

217

1 WYNDER

2 not to salute when it's an inconvenience
3 to either you or the officer.

4 Q. On that day, was it inconvenient
5 for you to salute Captain Spahl?

6 A. Correct, if I'm doing paperwork.

7 Q. The other incidents, were you
8 aware of the other four incidents that
9 Captain Spahl said you did not salute him
10 on? Do you have an understanding of what
11 those other incidents were?

12 A. According to Internal Affairs,
13 who said that I was working the desk and
14 he was standing there and I didn't salute
15 him, which I don't have to. He knows
16 that.

94979

17 Q. Do you remember that incident?

18 A. I don't remember the incidents

19 he put down. He claims he needed to be

20 saluted. There was no reason to salute

21 indoors. I had been on the job almost

22 eight or nine years; I had never saluted

23 indoors.

24 Q. Have you ever saluted Captain

25 Spahl at any time?

□

218

1 WYNDER

2 A. Of course. Outside or when you

3 go into his office, when he calls you into

4 his office.

5 Q. During the time that you worked

6 at Hawthorne, at SP Hawthorne, how many

7 times would you say you saluted Captain

8 Spahl?

9 A. I don't recall that.

10 Q. Would you say it was more than

11 10?

12 A. I don't recall that. I was

13 there for a couple of years.

14 Q. Would it be less than 10?

15 A. Indoors? Never saluted

16 indoors. Like I said, unless I went into

17 his office, or we were outside or we had

18 our hats on.

19 Q. In general, I'm asking whether

94979
20 it was indoors or outdoors the total
21 number of times?
22 A. I don't recall.
23 Q. We also spoke on Friday about an
24 incident in which you had an interaction
25 with City of Newburgh police officers.

219

1 WYNDER
2 You recall that?
3 A. Correct.
4 Q. Is it your understanding that
5 there was another officer who was African
6 American who had a similar type of
7 complaint filed against him for an
8 interaction with local police officers and
9 was allowed to apologize?
10 A. Rephrase the question.
11 Q. Do you recall that there was
12 another African American officer who you
13 were aware of who had a complaint filed
14 against him similar to the complaint that
15 was made against you by City of Newburgh
16 police officers?
17 MR. MERRITT: I have to object.
18 You haven't given a time frame.
19 Are you talking about from the
20 beginning of time until the present time
21 or are you talking about a year in
22 particular? Are you talking about any

94979
23 officer who had a complaint against the
24 town of Newburgh?
25 It's a ridiculous question, I'm

220

1 WYNDER
2 sorry, but you have to pin it down to some
3 time frame at least so we have some idea
4 how the witness can answer that question.
5 MS. ODESSKY: Okay.
6 Can I get this marked, please.
7 (Two-page charge of
8 discrimination marked Defendants' Exhibit
9 D for identification.)
10 Q. Mr. Wynder, I'm going to show
11 you what I've had marked as Defendants'
12 Exhibit D. Do you recognize this?
13 (Witness perusing document.)
14 A. Okay.
15 Q. What do you recognize that to
16 be?
17 (Witness perusing document.)
18 A. Yes, there was another trooper
19 in another station --
20 Q. Can we just back up, and I want
21 to identify for the record what this
22 document is.
23 A. It's an EEOC charge of
24 discrimination complaint filed.
25 Q. That's a complaint filed by you?

94979

221

1 WYNDER

2 A. Correct.

3 Q. Does it have a date there as to
4 when you filed that?

5 A. 9/15/97.

6 Q. Thank you.

7 Does that complaint in the
8 second paragraph, on the first page, make
9 reference to another black trooper?

10 A. Yes.

11 Q. Does that refresh your
12 recollection about whether or not you were
13 aware of another black trooper who was
14 accused of a similar complaint?

15 A. I believe so, yes. He was out
16 of another station.

17 Q. Can you recall as you sit here
18 now who that was?

19 A. I don't recall. If I'm not
20 mistaken, it could be Trooper Mckenney.

21 Q. Where was he working out of, if
22 you recall?

23 A. I believe at that time SP
24 Peekskill. I don't know. He transferred
25 later on.

222

94979

1 WYNDER

2 Q. Do you have a recollection of
3 what the complaint against Trooper
4 McKenney was?

5 A. From what I heard, it was just
6 an incident -- a stop with him and another
7 police officer.

8 Q. Was that other police officer a
9 member of New York State Police or a local
10 police officer?

11 A. I don't recall.

12 Q. Do you have an understanding of
13 what the complaint was against him because
14 of that stop?

15 A. Uh-uh. Just that he was stopped
16 and they had words.

17 Q. That he had words with another
18 officer?

19 A. Correct.

20 Q. When you say from what you
21 heard, did you hear this directly from
22 Trooper McKenney or from someone else?

23 A. I believe from other troopers at
24 SP Peekskill.

25 MS. ODESSKY: Right now, without

223

1 WYNDER

2 the documents, Exhibit D, have you
3 disclosed that in disclosure at any
Page 11

94979

4 point? I don't have it in any way.

5 MR. MERRITT: Yes.

6 MS. ODESSKY: Do you have the
7 number for that?

8 I don't have a Bates number on
9 my copy, but this was in a packet of
10 material that should have been disclosed.
11 It's actually a document written by
12 Mr. Wynder. I'll be happy to give you a
13 copy of that.

14 MR. MERRITT: Before we leave, I
15 would like to have a copy of each one of
16 the exhibits we've used.

17 MS. ODESSKY: I believe you have
18 a copy of everything that we did on
19 Friday, because you should have in the box
20 the copies with the original exhibit tabs
21 on there. I'll make you a copy of this
22 before you leave, Exhibit D.

23 BY MR. ODESSKY:

24 Q. In that second paragraph on
25 Exhibit D, you indicate that the officer

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224

1 WYNDER

2 was not suspended but was allowed to
3 apologize.

4 What was your understanding
5 about that?

6 A. I don't have any understanding
Page 12

94979

7 about that. I just know that he wasn't
8 brought up on charges.

9 Q. How do you know that?

10 A. That's what was told to me from
11 people -- other troopers at SP Peekskill.

12 Q. What was Trooper McKenney's
13 race?

14 A. Black.

15 Q. On Friday we also spoke about
16 you being out on sick leave from the New
17 York State Police at various times.

18 Can you tell me, to the best of
19 your recollection, how many separate times
20 you were out on sick leave while you were
21 with the New York State Police?

22 A. The first sick leave, off duty,
23 I was burned.

24 Second, I hurt an ankle.

25 Third was a car accident on

□

225

1 WYNDER

2 duty, ankle was on duty, and then the last
3 is a hernia.

4 Q. For the burn, you said that
5 occurred while you were off duty?

6 A. Correct.

7 Q. Did you file any workers'
8 Compensation for that?

9 A. No, it was off duty.

94979

10 Q. Did you use your sick time for
11 that?

12 A. Yes, I did.

13 Q. Approximately how much time did
14 you take off?

15 A. I don't remember. I may have
16 missed two weeks.

17 Q. Now, with your ankle, what was
18 the cause of the ankle injury?

19 A. Chasing a prisoner. Chasing --
20 not a prisoner but chasing a suspect.

21 Q. What happened to your ankle?

22 A. I twisted it and I tore -- I
23 stretched the ligaments in it.

24 Q. How long were you out for that?

25 A. About three months.

□

226

1 WYNDER

2 Q. Did you file for workers'
3 Compensation for that?

4 A. Yes, I did.

5 Q. Were you given workers'
6 Compensation?

7 A. Yes, I was.

8 Q. So you did not have to use your
9 sick time for that?

10 A. On-duty injury as per policy,
11 and workers' Compensation.

12 Q. Well, the car accident --
Page 14

94979

13 A. Before the car accident, I was
14 out one more time. I had developed,
15 because of the ankle injury, I developed
16 DBTs, blood clots.

17 Q. So were you out at the same time
18 as for the ankle or did you --

19 A. No, I came back from the ankle
20 and because they immobilized my ankle it
21 caused blood clots.

22 Q. How long were you out with the
23 blood clots?

24 A. Eight months, nine months maybe.

25 Q. Did you get workers'

□

227

1 WYNDER

2 Compensation for that time?

3 A. Yes, I did.

4 Q. Now, the car accident we spoke
5 about on Friday, you received workers'
6 compensation for that, correct?

7 A. No, I did not. Well, I received
8 workers' comp. It was an on-duty injury,
9 and according to workers' compensation
10 rules and the State Police rules, if you
11 do not contest an injury within 25 days,
12 which is a C-7 form, they cannot dispute
13 the disability nor the injury and they
14 must compensate you. And I was not
15 compensated for that incident.

94979

16 Q. So you never received any
17 workers' Comp?

18 A. No, I received workers' Comp,
19 but according to rules and regulations,
20 the New York State Police Manual, I'm
21 supposed to receive full pay. I received
22 full pay until the State Police decided
23 that they wanted me to come back to work
24 and they forced me back to work and that's
25 when I came in and signed in and signed

□ 228

1 WYNDER
2 back out, and that's when the State Police
3 refused to pay me.

4 Q. So it's your contention that you
5 should have been paid from that time when
6 you came back to work and that was -- was
7 that in September of 1996, approximately?

8 A. Yes. But it's not my
9 contention. That's the rules. After I
10 was awarded a Workers' Compensation
11 decision that said I was injured on the
12 job and the State Police refused to credit
13 back my time.

14 Q. Now, how about the hernia. We
15 discussed that on Friday, as well.

16 That was due to the change in
17 the gun and the gun belt situation?

18 A. Correct.

94979

19 Q. How much time were you out for
20 that?

21 A. About two months.

22 Q. Did you receive workers' Comp
23 for that time?

24 A. No.

25 Q. Why did you not receive workers'

□

229

1 WYNDER

2 Comp for that time?

3 A. It was not an on-duty injury.
4 workers' Compensation is only for on-duty
5 injuries.

6 Q. Any other sick leave time that
7 you can recall?

8 A. Yes, when I went out on
9 disability, stress.

10 Q. When did you go out on that
11 disability?

12 A. 12/28/1997 I signed out of the
13 blotter, unable to perform my duties due
14 to the hostile work conditions that was
15 being forced on me.

16 Q. Did you return to work after
17 that?

18 A. No.

19 Q. You were ultimately awarded
20 workers' compensation following the
21 hearing, correct?

94979

22 A. No, I wasn't. After I went out
23 on sick leave, State Police refused to pay
24 me full-duty pay, which they were supposed
25 to. Again, State Police violated their

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230

1 WYNDER

2 own rules and regulations and workers'
3 compensation law.

4 You have 25 days to file a C-7
5 in which to contest an injury. The State
6 Police failed to file this form and I
7 should have been paid from the time I was
8 out, but, again the State Police, because
9 of the color of my skin, decided not to
10 pay me, and until this date, the State
11 Police still owes me \$30,000 in back pay.

12 Q. What does that 30,000 cover?
13 What time period?

14 A. Over four months -- actually,
15 over a year and a half of full pay.

16 Q. What is the actual time period?
17 Does that time period begin on December
18 28, 1997?

19 A. Correct. Until 1999, when I
20 retired.

21 Q. Just a little confused.

22 You said it was four months of
23 pay that they owed you?

24 A. No, they owe me a year and a
 Page 18

94979

25 half from the time I retired -- 18 months,

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231

1 WYNDER

2 which according to the manuals, you are
3 allowed to be paid full pay for 18 months,
4 and the State Police refused to pay me.

5 Q. What money have you received
6 from workers' compensation to date?

7 A. Well, to this date, workers'
8 compensation paid me like they were
9 supposed to which is up to \$400 a week.

10 Q. When did you start receiving
11 that money?

12 A. After four years of fighting a
13 workers' compensation contested claim that
14 the State Police never contested. It took
15 four years. 27 hearings.

16 Q. So what was the date on which
17 you first received your first workers'
18 compensation benefit?

19 A. I don't recall it offhand. It
20 had to be -- I'm guessing, somewhere in
21 2002, 2003.

22 Q. When you received your first
23 benefit, did you get any amount
24 retroactive or did you just begin to get a
25 weekly payment?

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94979

232

1 WYNDER
2 A. From?
3 Q. From the time that you got the
4 decision saying that you were entitled to
5 workers' Compensation, when you received
6 your first check, was that just a weekly
7 check starting up or was there a
8 retroactive?
9 A. No, that was retro.
10 Q. There was a retroactive amount
11 that you received?
12 A. Correct.
13 Q. Can you tell me what amount that
14 was?
15 A. I can't recall right now.
16 Q. when you say that the benefit
17 was up to 400 a week, are you still
18 receiving a weekly benefit?
19 A. No.
20 Q. when did you stop receiving a
21 weekly benefit?
22 A. August of 2004.
23 Q. why did you stop receiving the
24 weekly benefit then?
25 A. Settlement.

233

1 WYNDER

94979

2 Q. what did that entail, the
3 settlement?

4 A. Five years.

5 Q. So, in other words, the
6 settlement was that you received five
7 years of workers' Compensation?

8 A. Yes.

9 Q. When you say that the payment
10 was up to \$400 a week, was that the amount
11 that you were receiving, 400, or was it
12 something less than that?

13 A. No, I received \$400 a week, but
14 there was one period of payment that they
15 didn't pay me at \$400 a week so....

16 MS. ODESSKY: Mr. Merritt, I'm
17 going to ask for the total amount of
18 workers' Compensation that Mr. Wynder has
19 received to date and I'll send you a
20 letter to that effect.

21 (Information requested.)

22 Q. Mr. Wynder, you indicated to me
23 on Friday that State Police contacted your
24 neighbors and asked your neighbors about
25 you and asked for permission to film

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234

1 WYNDER

2 you -- of your neighbors, correct?

3 A. Correct.

4 MR. MERRITT: Let me go back to

94979
5 your previous request. It's my
6 understanding that you are representing of
7 the State of New York; isn't that
8 correct?

9 MS. ODESSKY: Yes.

10 MR. MERRITT: The State of New
11 York is the one who paid Mr. Wynder's
12 Workers' Compensation, so you have full
13 access to those Workers' Compensation
14 payments. They are not something that I
15 necessarily have to produce if you already
16 have them.

17 MS. ODESSKY: That's fine. We
18 can take that up at another time.

19 MR. MERRITT: My point is the
20 State has paid Mr. Wynder, and they fully
21 accounted for the payments and you are
22 representing --

23 MS. ODESSKY: Actually, you are
24 incorrect there. I don't represent the
25 State of New York. I work for the State

235

1 WYNDER
2 of New York. My clients in this case are
3 the individual State Police members that
4 are being sued.

5 MR. MERRITT: Under contract
6 with the State of New York. You are
7 representing those individuals as the

94979

8 State of New York.

9 MS. ODESSKY: Workers'

10 Compensation is a separate agency. I do
11 not represent workers' Compensation.

12 MR. MERRITT: I wish that were
13 true, but during our workers' Compensation
14 period, I represented Mr. Wynder, and it
15 was constantly brought to our attention
16 that the State of New York was making the
17 payments.

18 MS. ODESSKY: Right, but that
19 was -- that hearing was conducted by the
20 State Insurance Fund. I do not work for
21 the State Insurance Fund.

22 I don't want to spend the time
23 now to argue that. We can take that up at
24 a separate time.

25 BY MS. ODESSKY:

236

1 WYNDER

2 Q. Mr. Wynder, going back to my
3 question about your neighbors being
4 questioned by State Police, it's your
5 understanding -- who did the questioning,
6 as far as you know?

7 A. What do you mean "who" --

8 Q. Who questioned your neighbors?
9 What individuals?

10 A. Internal Affairs.

94979

11 Q. Do you recall the names of any
12 individuals who questioned your neighbors?

13 A. No, I don't.

14 Q. Whose request was it that your
15 neighbors be questioned by Internal
16 Affairs?

17 A. I believe he said -- if I'm not
18 mistaken, that's what my neighbor told me,
19 it could have been Captain Klusacek.

20 Q. Anyone else that your neighbor
21 said it could have been?

22 A. He said he kind of remembered
23 that name, but there was two other
24 gentlemen with him.

25 Q. Did your neighbor tell you that

237

1 WYNDER

2 he actually spoke with Captain Klusacek?

3 A. Yes, he did.

4 Q. What neighbor was that again?

5 A. I don't remember his last name,
6 but his first name is Ed. He lived across
7 the street from me.

8 Q. If this matter were to go to
9 trial, would you call your neighbors in to
10 testify on your behalf?

11 MR. MERRITT: Objection.

12 Q. You can answer.

13 MR. MERRITT: You are asking for

94979

14 conjecture.

15 MS. ODESSKY: I believe I'm
16 entitled to know, Mr. Merritt, who the
17 possible witnesses will be.

18 If Mr. Wynder doesn't know at
19 this time, he's free to tell me that he
20 doesn't know.

21 MR. MERRITT: You are asking
22 would he --

23 MS. ODESSKY: I'm asking who are
24 your witnesses, particularly regarding the
25 statement that State Police questioned

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238

1 WYNDER

2 your neighbors.

3 A. I don't know who I'm going to be
4 calling as a witness yet.

5 Q. As you sit here today, do you
6 have the name of one particular neighbor
7 that you would call as a witness?

8 A. There's a few, if they still
9 live there. I've moved from that area, so
10 I'd have to see if I can contact them.

11 Q. During the time that your
12 neighbors were contacted, were you out on
13 sick leave at that point?

14 A. I don't recall. I could have
15 been. I could have been -- coming back
16 off my hernia operation. It was around

94979

17 that time, in 1997.

18 Q. Is it your understanding that
19 New York State Police has in the past done
20 some investigation when troopers or other
21 members of State Police are on sick leave?

22 A. Not when you are on hernia sick
23 leave.

24 Q. So is it your understanding that
25 the -- speaking to your neighbors

□

239

1 WYNDER

2 regarding you was an unusual situation?

3 A. Well, unusual in the fact that
4 he told me that they weren't there to see
5 if I was sick. They were there to watch
6 my activities which had nothing to do with
7 being sick.

8 Q. How do you know it had nothing
9 to do with your being sick?

10 A. Well, he asked them that and he
11 said they were there, they wanted to check
12 for the activities and the fact that I may
13 have been doing criminal activity.

14 Q. What criminal activity did they
15 tell your neighbor that they were watching
16 for?

17 A. That they didn't disclose to
18 him, and they told him to keep it a
19 secret.

94979

20 Q. Mr. Wynder, at some point you
21 met with someone from the EEOC, correct?
22 A. Correct.
23 Q. Did you actually have an
24 in-person interview?
25 A. Correct.

240

1 WYNDER
2 Q. Do you recall who it was that
3 you met with in person?
4 A. No.
5 Q. Did you meet with somebody more
6 than once?
7 A. I went to EEOC numerous times.
8 Q. Did you have interviews in
9 person on more than one occasion?
10 A. I can't recall. I could have
11 spoken to numerous people. I spoke to as
12 many people as I possibly could.
13 Q. What was your understanding
14 about the result of your going to EEOC?
15 A. What do you mean
16 "understanding"?
17 Q. Did they give you the resolution
18 that you were looking for?
19 A. Yeah.
20 Q. What did they tell you?
21 A. Well, they told me two things.
22 One, even if they took the case,

94979
23 there was nothing they could do to the
24 State Police.
25 And the other one was that I

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241

1 WYNDER
2 needed a letter -- right to sue.
3 Q. Did they give you a right-to-sue
4 letter?
5 A. Yes, they did.
6 Q. Other than giving you the
7 right-to-sue letter, did they take any
8 other action?
9 A. Did EEOC take any other action?
10 Q. Yes.
11 A. No, they never do.
12 Q. Did they give you any indication
13 as to whether your complaints to them were
14 founded or unfounded?
15 A. They just said they weren't
16 going to investigate it at this time and
17 that I'd be better suited by taking it to
18 court.
19 Q. Do you know whether anyone at
20 the EEOC ever expressed an opinion to you
21 about the merit of your case?
22 A. They told me I had a good case.
23 Q. Who told you that?
24 A. Like I said, I don't recall who
25 I spoke to.

94979

242

1 WYNDER

2 Q. The person who told you you had
3 a good case, what particularly did they
4 say?

5 A. That I should fight it.

6 Q. When you said "fight it," what
7 did they mean?

8 A. Sue the State Police, which is
9 what they gave the right-to-sue letter
10 for.

11 Q. Mr. Wynder, since leaving the
12 New York State Police, have you been
13 employed?

14 A. Yes, I have.

15 Q. When you left New York State
16 Police, what was the first employment you
17 had?

18 A. When I first left the State
19 Police, I didn't work for a while. I was
20 out on sick leave seeing doctors.

21 Q. When you were out on sick leave
22 seeing doctors, what doctors did you see?

23 A. Dr. Hugh Butts.

24 Q. Who else?

25 A. And then I saw the State

243

94979

1 WYNDER

2 disability doctor.

3 Q. Was that a psychiatrist?

4 A. Yes, it was, for the State
5 Disability Board.

6 Q. Do you remember who that was?

7 A. No -- not offhand.

8 Q. Who else did you see?

9 A. Well, those are the only doctors
10 that I saw, which was kind of interesting
11 considering the State Police Manual rules
12 and regs said when a member goes out on
13 sick leave the State Police is supposed to
14 have them see a doctor within 30 days.

15 Q. And you did not see a doctor
16 within 30 days?

17 A. No. State Police again failed
18 to follow their rules and regs, because if
19 they made me go see a doctor, they would
20 have had to pay me. So by not sending me,
21 they were able not to pay me. Again,
22 another discriminatory action by the State
23 Police.

24 Q. Did you at this time see a
25 family doctor?

□

244

1 WYNDER

2 A. I was seeing Dr. Butts.

3 Q. Other than that, did you have a
Page 30

94979

4 family physician that you regularly saw?

5 A. If I was sick.

6 Q. Did you speak to your family
7 physician regarding the situation with
8 State Police?

9 A. Family physician? No.

10 Q. Do you have a family physician
11 to this day?

12 A. Yes, I do.

13 Q. who is your family physician?

14 A. Dr. Burns.

15 Q. Can you spell that?

16 A. B-u-r-n-s.

17 Q. The first name?

18 A. I forgot his first name.

19 Q. where is he located?

20 A. Peekskill, New York.

21 Q. Did you see Dr. Burns during
22 this time period when you were working for
23 State Police or when you went on sick
24 leave from State Police?

25 A. I always saw Dr. Burns or

245

1 WYNDER

2 Dr. McGurty.

3 Q. Dr. --

4 A. McGurty.

5 Q. Besides Dr. Burns, Dr. McGurty
6 and Dr. Butts, did you see anyone else

94979

7 regarding --

8 MS. ODESSKY: Strike that.

9 Q. -- anyone else during the time
10 that you were out on sick leave?

11 A. Whoever Dr. Burns referred me
12 to. I went to see Dr. Burns for stress
13 disorder. He wanted to make sure that I
14 was okay and he set me up for tests.

15 Q. Who did he send you to for
16 tests?

17 A. I don't recall.

18 Q. What kind of tests were you sent
19 for?

20 A. Stress test. Heart test -- I
21 don't --

22 Q. Was it Dr. Burns who referred
23 you to Dr. Butts?

24 A. No.

25 Q. Who referred you to Dr. Butts?

□

246

1 WYNDER

2 A. I don't recall who referred me
3 to Dr. Butts.

4 Q. Was it on your attorney's
5 advice?

6 A. No.

7 MR. MERRITT: I'll object to
8 that question, as well.

9 One question, we haven't

94979

10 stipulated -- I assume we are using the
11 standard stipulations.

12 MS. ODESSKY: That's correct.

13 MR. MERRITT: My objections will
14 be to the form of the question and all
15 other objections are reserved.

16 Q. Mr. Wynder, when did you begin
17 working again after leaving the State
18 Police?

19 A. I believe sometime in May 1999.

20 Q. When you began working in May of
21 1999, where did you work?

22 A. The Wiz.

23 Q. What did you do there?

24 A. Sales associate.

25 Q. What store was that? Where is

247

1 WYNDER

2 that located?

3 A. Queens, Steinway Street.

4 Q. Did you have a supervisor there?

5 A. Yes, I did.

6 Q. Who was that?

7 A. Chris Molda.

8 Q. Chris -- can you spell that?

9 A. M-o-l-d-a.

10 Q. How long were you there?

11 A. Till they closed.

12 Q. When did they close?

94979

13 A. I don't recall. 2001, 2002.

14 Q. Was that a full-time or
15 part-time job?

16 A. Part-time hours.

17 Q. What hours did you work?

18 A. It varied. They were open seven
19 days, 16 hours a day.

20 Q. During that time, did you have
21 another position?

22 A. No.

23 Q. When that store closed, did you
24 work someplace else?

25 A. Yes.

□

248

1 WYNDER

2 Q. Where did you work?

3 A. New York Mets.

4 Q. What did you do for the Mets?

5 A. Supervisor.

6 Q. When you say "supervisor," who
7 did you supervise?

8 A. All the union people in the
9 stadium.

10 Q. What were the jobs of the union
11 people that you supervised?

12 A. They all have different jobs.
13 Concessions, ticket takers, ushers,
14 security.

15 Q. As the supervisor, what was your
Page 34

94979

16 job? What were your duties?

17 A. Just to observe and make sure
18 that they did their job.

19 Q. Do you know when you started
20 working there?

21 A. I believe right around the same
22 time The Wiz closed. 2002.

23 Q. Who did you report to?

24 A. Who did I report to there?

25 Q. Yes.

249

1 WYNDER

2 A. Bruce Smith.

3 Q. What is Mr. Smith's position
4 there?

5 A. He's my boss.

6 Q. What was his title?

7 A. He's a supervisor, too, but he's
8 my boss.

9 Q. Is he still there, Mr. Smith?

10 A. Yes, he is.

11 Q. When you started working there
12 in 2002, did you work part-time or
13 full-time?

14 A. It's seasonal, so it's
15 part-time.

16 Q. When it was seasonal, did you
17 work full days or part days?

18 A. When the Mets were in town.

94979

19 Q. When they were not there, did
20 you have another position?

21 A. Nope. Same, supervisor. I
22 would work occasionally, a weekend, for
23 them if I had to cover for somebody, but
24 other than that, basically we worked
25 during the summer and I collect

□

250

1 WYNDER

2 unemployment during the winter.

3 Q. Was there any travel involved in
4 your position with the Mets?

5 A. Of course.

6 Q. What was the travel that was
7 involved?

8 A. From my house to the Mets.

9 Q. Other than your commuting, was
10 there travel involved?

11 A. No.

12 what do you mean by "travel"?

13 Did I travel with the team?

14 Q. Yes.

15 A. No.

16 Q. Did you as part of your work,
17 were you required to carry a gun or any
18 type of weapon?

19 A. No. My job is to supervise and
20 observe.

21 Q. Did you have anything to do with

94979

22 security?

23 A. We just watch. They check bags,
24 they do all security work.

25 Q. So it would be fair to say that

251

1 WYNDER

2 you yourself did not participate in
3 security for the Mets?

4 A. We observed the security and
5 make sure they do their job, but as far as
6 physically doing security work, no. We
7 supervise.

8 Q. Do you have this job to the
9 present day?

10 A. Yes.

11 Q. Other than The Wiz and the Mets,
12 are there any other jobs that you've had
13 since leaving the State Police?

14 A. No.

15 Q. Mr. Wynder, have you ever been
16 arrested?

17 A. No.

18 Q. I assume you've never been
19 convicted of a crime?

20 A. No.

21 Q. I'm going to show you what I had
22 marked previously as Defendants' Exhibit
23 A, and is it fair to say, Mr. Wynder, that
24 this is the third amended complaint in

94979

25 this federal lawsuit?

252

1 WYNDER

2 A. That's what it says. I'm
3 looking for the date. Yes, May 24, 2004.
4 Five years after we filed the lawsuit.
5 Correct.

6 Q. Is it your understanding that
7 this is the current complaint that is in
8 effect in your lawsuit?

9 A. May 24 -- yes, this was right
10 after court appeals decision to reinstate
11 my case, correct.

12 Q. Have you seen this complaint
13 before just now?

14 A. Of course. I signed it.

15 Q. Is that your signature that
16 appears on the last page of the complaint?

17 A. Yes, it is.

18 Q. Where does it appear? I think
19 it's actually Mr. Merritt's signature that
20 appears on there.

21 A. Yes.

22 Q. I think it's fair to say your
23 signature had appeared on previous
24 complaints --

25 MS. ODESSKY: I'll strike that.

94979

253

1 WYNDER

2 Q. Mr. Merritt is your attorney who
3 is representing you in the deposition
4 today, correct?

5 A. Yes, he is.

6 Q. Did you assist Mr. Merritt in
7 preparing this complaint?

8 A. Yes, I did.

9 Q. Now, without telling me what you
10 discussed with Mr. Merritt, just a yes or
11 no, did you discuss the contents of this
12 complaint with Mr. Merritt?

13 A. I don't understand your
14 question.

15 Q. I don't want you to tell me what
16 you discussed, but I just want you to tell
17 me, yes or no, have you and Mr. Merritt
18 discussed what's contained in this
19 complaint, the allegations contained in
20 this complaint?

21 A. Oh, did I tell him everything
22 that happened to me?

23 Q. Did you discuss with him the
24 allegations that are contained in the
25 complaint?

254

1 WYNDER

94979

2 A. Yes, I did.

3 Q. To the best of your knowledge,
4 are all the statements that are contained
5 in this complaint true and accurate?

6 A. Yes, they are.

7 MR. MERRITT: I just might add
8 there's only one thing missing from the
9 complaint, that's the EEOC complaint which
10 was incorporated in the first complaint.
11 So since it's incorporated in the first
12 complaint, it wasn't included in the
13 subsequent complaints.

14 MS. ODESSKY: Thank you.

15 Q. Mr. Wynder, during the time of
16 each of the incidents that are mentioned
17 in the complaint, did you ever keep a
18 journal or a diary?

19 A. No.

20 Q. I'm going to ask you to turn to
21 page 8 and take a look at paragraph 27.
22 Page 8, paragraph -- the pages are on the
23 bottom left-hand corner. Paragraph 27.

24 A. Yes.

25 Q. That reads, "After suffering a

□

255

1 WYNDER
2 hostile work environment, being denied
3 promotions, suffering inferior work
4 assignments and suffering severe

94979
5 discrimination, plaintiff experienced a
6 complete nervous breakdown and was granted
7 a disability retirement from NYSP."

8 Did I read that correctly?

9 A. Yes, you did.

10 Q. Is it your understanding that
11 you experienced a complete nervous
12 breakdown?

13 A. According to my doctor,
14 Dr. Butts, yes, I did.

15 Q. When did that occur?

16 A. Still occurring. Still haven't
17 recovered.

18 Q. Were you hospitalized in
19 connection with suffering a complete
20 nervous breakdown?

21 A. No. I was just on Prozac.

22 Q. Did Dr. Butts ever suggest that
23 you be hospitalized?

24 A. No. Only if I needed to, but I
25 was basically home doing nothing, so I

256

1 WYNDER
2 didn't have to be hospitalized.

3 Q. I'm going to ask you to turn now
4 to page 16, paragraph 69.

5 It reads as follows: "Upon
6 information and belief, prior to plaintiff
7 returning to work Internal Affairs Bureau,

94979

8 IAB, Captain Klusacek, under orders from
9 McMahon, went to Marine Midland Bank in
10 Vailsgate, New York, and demanded access
11 to plaintiff's bank records without a
12 subpoena or authorization to access the
13 records."

14 Did I read that correctly?

15 A. Yes, you did.

16 Q. How do you know that this
17 occurred?

18 A. How do I know this occurred?
19 well, one, Brenda Bennie.

20 Q. Who is Brenda Bennie?

21 A. Branch manager.

22 Q. Is that B-e-n-n-i-e?

23 A. Yes.

24 Q. Did Ms. Bennie tell you that
25 this had occurred?

□

257

1 WYNDER

2 A. Yes, she did. She called me and
3 stated that the State Police was trying to
4 access my records without a legal
5 subpoena.

6 Q. Who did she say she had spoken
7 to?

8 A. Captain Klusacek.

9 Q. Now, you start by saying, "Upon
10 information and belief"; what do you mean

94979

11 when you say "information and belief"?

12 A. Well, I spoke to her and then I

13 filed a complaint against the New York

14 State Police and Captain Klusacek for

15 violating rules and regulations of

16 disseminating derogatory information about

17 a member, and also revealing an ongoing

18 criminal investigation towards a member.

19 Q. Now, in the middle of that
20 paragraph, you say, "Captain Klusacek,
21 under orders from McMahon."

22 How did you know that Captain
23 Klusacek was acting under orders from
24 McMahon?

25 A. Well, they stated that they were

1 WYNDER
2 doing a criminal investigation and all
3 rules and regulations are adhered and
4 signed off by Superintendent James
5 McMahon. Everything that you do as a
6 trooper is under the orders of James
7 McMahon.

8 Q. Other than that, do you have any
9 other reason to believe that Captain
10 Klusacek was acting under orders from
11 McMahon?

12 A. Of course. He works for the
13 State Police.

94979

14 Q. Any other reason that you
15 believe Captain Klusacek was acting under
16 orders from Superintendent McMahon?

17 A. Again, I'll clarify it:
18 Regulations, rules and regulations, any
19 job performances or job descriptions that
20 you do is under the orders of James
21 McMahon, superintendent of the New York
22 State Police.

23 Q. Taking a look at paragraph 70,
24 that reads, "Bank executive Brenda Bennie
25 denied Captain Klusacek access to

□

259

1 WYNDER

2 plaintiff's bank records."

3 Again, how do you know that?

4 A. Again, verbally, she told me
5 that the State Police violated rules and
6 regulations and came in with an illegal
7 request for my bank records.

8 Q. Why was it an illegal request?

9 A. Well, for one reason, at that
10 time they did not have a subpoena, and if
11 you wanted records, you would go to the
12 branch -- to the headquarters which was in
13 Buffalo, New York, not to the branch.

14 Secondly, under public officer's
15 law, State Police must request any records
16 against me from me first. If I deny them,

94979

17 then they have a right to issue an
18 administrative subpoena, signed by a
19 judge, not by the State Police.

20 Also, no subpoenas under
21 administrative law can be issued unless a
22 hearing date is defined.

23 Also, a subpoena must state
24 reasons why they request the records and a
25 specific item that they are looking for.

□

260

1 WYNDER

2 They cannot be vague, because it's on the
3 same ground rules as a search warrant.

4 Q. Was it your understanding that
5 the State Police did not comply with any
6 of these requirements that you've told me
7 about?

8 A. I know they didn't comply with
9 it.

10 Q. And that's based upon your
11 discussion with Ms. Bennie?

12 A. Of course.

13 Q. Anything else that it's based
14 upon?

15 A. Based on the fact that I have a
16 copy of the subpoena. As a matter of
17 fact, numerous subpoenas, but we'll stick
18 to this one right here.

19 Yes, I have a copy of the

94979

20 subpoena, which was in violation of
21 federal rules and regulations. Any
22 subpoena issued against anybody's bank,
23 financial institutions must be notified.
24 Q. And you were not notified?
25 A. Of course not. As testified at

□

261

1 WYNDER
2 Workers' Compensation, State Police wanted
3 to keep it a secret.
4 Q. Going onto paragraph 71 that
5 read as follows: "After being denied
6 access to plaintiff's bank records,
7 Captain Klusacek, in violation of NYSP
8 policy, divulged that plaintiff was under
9 a criminal investigation for, one, alleged
10 drug sales; two, alleged money laundering;
11 and three, alleged gun smuggling."
12 How do you know that?
13 A. Again, after Miss Bennie
14 informed me that the State Police was
15 trying to violate my right to privacy, she
16 told me that she asked why were they
17 looking for my records, because she knew
18 me, and she said she had known me for a
19 few years and that I was an upstanding
20 person, and she asked why. Captain
21 Klusacek said that I was spending too much
22 time away from my job and I was under

94979
23 investigation for drugs, money and guns,
24 and that I was living above my means.
25 Q. Did Captain Klusacek say

□

262

1 WYNDER
2 anything else to Miss Bennie that you know
3 of?
4 A. She told me that he was very mad
5 that he couldn't get the records that he
6 wanted and he said he would be back.
7 Q. Did Captain Klusacek say
8 anything else to Miss Bennie regarding you
9 that you know of?
10 A. Again, as I stated, that I was
11 under criminal investigation, and that
12 actually she told me that she should not
13 talk to me and stay away from me.
14 Q. In fact, Miss Bennie contacted
15 you after speaking to Captain Klusacek,
16 correct?
17 A. Yes, she has a fiduciary duty to
18 contact me being that I'm a customer of
19 her bank and that an entity or agency is
20 attempting to access information that is
21 not granted unless signed by a legal
22 subpoena.
23 Q. Prior to that date that
24 Miss Bennie contacted you to let you know
25 about Captain Klusacek trying to get your

94979

263

1 WYNDER

2 records, how long had you known her?

3 A. Like I said, I've known her
4 for -- since I opened up my account at
5 Marine Midland Bank.

6 Q. Had you known her just through
7 your banking business or known her for
8 other -- in other areas?

9 A. Just through my banking
10 business.

11 Q. When did you open that account,
12 approximately?

13 A. I don't recall.

14 Q. At the time that Captain
15 Klusacek spoke to Miss Bennie, had you had
16 that account for more than five years?

17 A. I don't recall.

18 Q. I'm going to ask you to turn now
19 to -- on page 17, paragraph 73; do you see
20 that right there?

21 A. Uh-huh.

22 Q. It reads: "On information and
23 belief, IAB, under orders from McMahon,
24 sent officers to plaintiff's neighborhood
25 to conduct surveillance and to gather

264

94979

1

WYNDER

2

information from plaintiff's neighbors."

3

Did I read that accurately?

4

A. Yes, you did.

5

Q. Again, what is your

6

understanding of --

7

MS. ODESSKY: Withdrawn.

8

Q. What do you understand to be the

9

reason that the officers acted under

10

orders from McMahon?

11

A. Again, Internal Affairs and all

12

rules and regulations and job duties are

13

done under the orders of McMahon and the

14

New York State State Police, which he is

15

the New York State Police.

16

Q. Do you have any other

17

information that you base that statement

18

upon?

19

A. Again, rules and regulations,

20

whatever members do on the job is under

21

the orders of James McMahon. He has to

22

notify and be told of subpoenas,

23

surveillances. You think that Internal

24

Affairs does things and the superintendent

25

doesn't know?

265

1

WYNDER

2

Q. What is your basis for saying

3

that the superintendent knew what Internal

94979

4 Affairs was doing?

5 A. Well, according to the State
6 Police, I was a criminal. You don't think
7 they would not talk to the superintendent
8 about how to handle this?

9 Q. Do you have any knowledge as you
10 sit here today that the superintendent was
11 aware of Internal Affairs contacting your
12 neighbors?

13 A. Yes, I do.

14 Q. What do you base that on?

15 A. Well, considering I wrote him a
16 letter and explained to him everything
17 that was going on, he sent down his
18 confidential assistant, Colonel Tagget
19 (phonetic), who spoke with me for a good
20 two or three hours.

21 Q. What was the result of that
22 conversation?

23 A. The hostile work environment and
24 the racial discrimination against me was
25 stepped up to even more than what it was.

266

1 WYNDER

2 Q. When you say that, what do you
3 mean?

4 A. The State Police continued to
5 investigate me and destroy my career and
6 my life even more after I spoke to the

94979

7 Colonel.

8 Q. Can you tell me when you spoke
9 to Colonel Tagget?

10 A. Somewhere between September and
11 November of '97.

12 And that was after I had wrote
13 the President of the United States.
14 That's why he came down to talk to me,
15 also, because he didn't believe that I
16 wrote the President of the United States.

17 Q. Did you ever speak directly to
18 Superintendent McMahon?

19 A. Not allowed to speak directly to
20 the superintendent.

21 Q. I'd like to ask you to turn your
22 attention to paragraph 74, which reads as
23 follows: "That upon information and
24 belief, under orders from McMahon,
25 officers from IAB falsely told plaintiff's

□

267

1 WYNDER
2 neighbors that he was, one, a drug dealer;
3 two, a gun smuggler; and three, a money
4 launderer in a malicious effort to
5 pressure plaintiff to quit his position as
6 a New York State trooper."

7 Did I read that paragraph
8 correctly?

9 A. Yes, you did.

94979

10 Q. Again, what is the basis for
11 your belief that the officers from IAB
12 were acting under orders from McMahon?

13 A. Again, rules and regulations and
14 chain of command. They cannot do anything
15 without chain of command. They have to
16 ask their officer for permission, that
17 officer has to ask their superior officer
18 for permission and eventually the
19 superintendent signs off on all
20 investigations.

21 Q. I'd ask you to turn to paragraph
22 76 at the bottom of page 17, it starts,
23 "Upon information and belief, Spahl,
24 McMahon and others falsely told other
25 troopers that New York State Police wanted

268

1 WYNDER
2 to terminate a dirty cop, causing
3 plaintiff to be shunned and avoided by
4 other New York State troopers."

5 Did I read that correctly?

6 A. Yes, you did.

7 Q. Is it your understanding that
8 Defendant Spahl directly told other
9 troopers that New York State Police wanted
10 to terminate a, quote, dirty cop?

11 A. Yes, he did.

12 Q. What is your information that he
Page 52

94979

13 did that?

14 A. He told other members of the
15 State Police.

16 Q. How do you know that?

17 A. well, they told me.

18 Q. Your testimony is that Captain
19 Spahl directly told you that he told other
20 troopers that New York State Police wanted
21 to terminate a, quote, dirty cop?

22 A. well, he stated that I was under
23 criminal investigation and that I was
24 dirty and that I should be stayed away
25 from, which other members of SP Hawthorne

269

1 WYNDER

2 stayed away from me, my neighbors stayed
3 away from me, even Brenda Bennie, after
4 she had contacted me about the illegal
5 subpoena, Captain Klusacek called her back
6 and threatened her job and her career.

7 Q. what did he say to her?

8 A. He told her that she was the
9 leak to this investigation and how dare
10 she tell me and inform me of the criminal
11 investigation that was going on.

12 Q. what did she say in response?

13 A. well, she told him that she had
14 had friends or family that were State
15 troopers and that she was not scared of

94979

16 him, and she told him that she had no
17 other words to say to him.

18 Q. Did Miss Bennie lose her job or
19 have any trouble on her job?

20 A. Yes, she did. She had a lot of
21 problems on her job after that.

22 Q. What were those problems?

23 A. Well, they were mad at her, her
24 management. They was trying to fire her.
25 Then all of a sudden they started picking

270

1 WYNDER

2 on her.

3 Q. Does she still work with that
4 bank -- Marine Midland, correct?

5 A. Correct.

6 I can't answer that question.

7 Q. When was the last time you spoke
8 with Miss Bennie?

9 A. The last time Miss Bennie spoke
10 to me was after her branch told her that
11 she could not communicate with me
12 anymore.

13 Q. When was that in relation to
14 when the records were requested?

15 A. Again, right after that,
16 because, according to the New York State
17 Police documents, which you should have in
18 your possession, they forwarded her and

94979

19 they even wrote that she was a person of
20 non-moral character and that she was the
21 leak to the criminal investigation and she
22 was the one who informed me that they were
23 doing a criminal investigation.

24 Q. Going back to paragraph 76, what
25 do you base your information upon saying

271

1 WYNDER

2 that McMahon falsely told other troopers
3 that NYSP wanted to terminate a dirty cop?
4 A. Told? Of course he told. He's
5 the one who initiated the investigation
6 and as we have in our possession now,
7 after numerous, as I call, perjured
8 testimony from Lieutenant Barbaria who
9 claimed there were statements alleging a
10 criminal investigation for my conduct
11 which was revealed to us recently that I
12 had went to California, committed a murder
13 eight years ago. Actually, 1989. And
14 that I was a drug dealer and that I worked
15 out of my mother's house as a drug
16 dealer. So apparently McMahon ordered
17 this and knew that I was a dirty cop,
18 which is why he signed off on the
19 investigation against me.

20 Q. As you sit here today,
21 Mr. Wynder, do you have any information

94979

22 that Superintendent McMahon directly told
23 other troopers that you were a dirty cop?

24 A. He signed off on my
25 investigation.

272

1 WYNDER

2 Q. Now, taking a look at paragraph
3 77 which is on page 8 and reads as
4 follows: "That by releasing the false
5 information, defendants McMahon and Spahl
6 intended to chill plaintiff's free speech
7 with other troopers and to restrict his
8 right to free association with other
9 workers in direct violation of first
10 amendment rights."

11 Did I read that correctly?

12 A. Correct.

13 Q. What was the speech that you
14 were chilled from making, the free speech?

15 A. Well, it's a known fact, if I
16 say anything derogatory about the State
17 Police, they'll go after you, start
18 bringing you up on charges.

19 Q. What was it particularly that
20 you were saying?

21 A. That they were racist.

22 Q. Anything else?

23 A. That they were discriminating
24 against me because I was black.

94979

25 Q. Anything else?

273

1 WYNDER

2 A. And that they were violating
3 their own rules and regs and nobody cared
4 because the State Police is a paramilitary
5 organization who thinks they can do
6 whatever they want and they are above the
7 law.

8 Q. Anything else?

9 A. That's about -- in a nutshell.

10 Q. In that same paragraph, you talk
11 about them restricting your right to free
12 association with other workers.

13 what do you mean by that?

14 A. well, by all the charges being
15 brought against me and all the accusations
16 and all the attempted complaints, nobody
17 wanted to work with me, nobody wanted to
18 ride with me. As a matter of fact, the
19 joke was stay away from me or you wouldn't
20 have your job neither.

21 Q. Did people actually stay away
22 from you?

23 A. Yes, they did. wouldn't you?

24 Q. Can you tell me the names of any
25 particular individuals who made that joke

94979

274

1 WYNDER

2 about staying away from you?

3 A. SP Hawthorne, the whole
4 barracks. Everyone knew division hated
5 me.

6 And I mean division, because any
7 complaints generated against a trooper, if
8 there's a problem with them, will go from
9 the bottom of the chain up, which means
10 your station commander, your sergeant. If
11 there's any complaints with you, it will
12 start from there and work its way up. All
13 my complaints against me started from
14 Albany in division and worked their way
15 down.

16 Q. We spoke yesterday about SP
17 Hawthorne, and I believe you told me that
18 around this same time when you started
19 having these incidents, you said that SP
20 Hawthorne was primarily the troop -- the
21 troopers there were primarily African
22 American; is that correct?

23 A. Yes.

24 Q. During this same time when you
25 are saying that no one wanted to ride with

□

275

1 WYNDER

94979

2 you and the troopers wanted to stay away
3 from you, would it still be fair to say
4 that at that time the troopers at SP
5 Hawthorne were primarily African American?

6 A. Yes.

7 Q. I just want to go back for a
8 moment to something we discussed Friday.
9 we talked about the drug test
10 that was given in July of 1997?

11 A. It was given in September of
12 '97.

13 Q. I'm sorry, September of '97.
14 You said that that was a test
15 that you believe was postponed until you
16 returned from your sick leave?

17 A. I believe there was -- I believe
18 it was affirmed that it was postponed.

19 Q. When you say "it was affirmed,"
20 who was it affirmed by?

21 A. Well, Colonel Corbett
22 (phonetic).

23 Q. Anyone else?

24 A. Al Wolford (phonetic), PBA
25 president.

276

1 WYNDER

2 Q. And they affirmed the fact that
3 the test was postponed specifically for
4 you to return from your sick leave?

94979

5 A. Oh, yes. And the sergeant said
6 it, too. The station commander who knew
7 that the test was in July and then said
8 then they asked when was I coming back to
9 work and it was in September, because your
10 schedule is always 30 days ahead, so you
11 would know what days to come down or what
12 days a member is working.

13 Q. who was the sergeant?

14 A. I believe at that time it was
15 zemanek, Antalek, could have been one of
16 those, Smosky. I have no recollection of
17 who at the time handled that.

18 Q. As a result of that drug test,
19 you weren't found to have any drugs in
20 your system, correct?

21 A. No.

22 Q. was anyone who was tested on
23 that day found to have drugs in their
24 system?

25 A. Yes.

277

1 WYNDER

2 Q. who was that?

3 A. I believe Trooper Sagilabenni.

4 Q. You mentioned on Friday, I
5 believe, that Trooper Sagilabenni was one
6 of the few troopers at Hawthorne during
7 that time period who was white?

94979

8 A. Yes, he was the only one, I
9 believe, at the time -- might have been
10 somebody else.

11 And he was put at SP Hawthorne,
12 again, as I explained to you -- SP
13 Hawthorne was, if you look at TV, it was F
14 Troop, where all the bad troopers went or
15 the troopers that division didn't like,
16 and I believe that Trooper Sagilabenni was
17 already at that station for previous
18 misconduct and also for the fact that he
19 was already from what was given --
20 disciplinary action from another case. He
21 was actually from Troop F.

22 Q. Do you know if any discipline
23 was issued to Trooper Sagilabenni because
24 he was found to have drugs in his system
25 as a result of that drug test?

1 WYNDER

2 A. I believe he was brought up on
3 charges.

4 Q. Do you know the result of those
5 charges?

6 A. He was terminated.

7 Q. I'm going to ask you to turn now
8 to paragraph 79 on page 18. It reads as
9 follows: "Upon information and belief,
10 Spahl and McMahon intentionally postponed

94979

11 the drug test in an attempt to catch
12 plaintiff when he returned to work and to
13 further chill his right to free
14 association with other workers."

15 Is it your contention,
16 Mr. Wynder, that Captain Spahl
17 intentionally postponed the drug test?

18 A. Yes.

19 Q. What do you base that on?

20 A. I base it on the fact that I was
21 out with my hernia operation, the fact
22 that the test was originally scheduled in
23 July, okay, and in the 23 years that the
24 maintenance guy and one of the other
25 sarges had worked at State Police there

279

1 WYNDER

2 had never been a drug test at SP
3 Hawthorne.

4 Q. Is it also your contention that
5 Superintendent McMahon was involved in
6 postponing the drug test?

7 A. Of course.

8 Q. What do you base that is on?

9 A. Who else would have the right to
10 postpone a drug test? You have to give
11 him a reason why he was postponing the
12 drug test. Why would you pull a date --
13 as I quoted to you, the State Police has

94979
14 no policy for drug testing, but they claim
15 it was random. So if you pull a date to
16 test troopers on that date, wouldn't you
17 think you would test them on that date,
18 not postpone it for three months later,
19 and also to the fact that I know that drug
20 test was for me, okay, was because since
21 then there has never been another drug
22 test at SP Hawthorne, to my knowledge, and
23 also it was not intended as the rumor was
24 that they came down to get me and they
25 found one of their own. They found

□

280

1 WYNDER
2 another white trooper that they didn't
3 intend on getting because they knew he was
4 taking drugs.
5 Q. So it's your contention that
6 Superintendent McMahon specifically set
7 the date for the drug test in order to
8 make sure that you would be present?
9 A. Of course. If he wanted to -- I
10 mean, just cop analysis, Sagilabenni had
11 been in that station for, what, all the
12 months I was out on sick leave? So if it
13 was targeted at him, why didn't they have
14 it then? Why did they wait for me, the
15 first business day that I returned from
16 having a hernia operation?

94979

17 Q. what direct information do you
18 have to support your claim that
19 Superintendent McMahon postponed the drug
20 test specifically for you?

21 A. Again, Internal Affairs has to
22 have authority to postpone a drug test.
23 The only authority they are going to get
24 it from is Superintendent McMahon, and
25 then to reschedule it, it has to come from

□

281

1 WYNDER

2 Superintendent McMahon.

3 Q. Do you have direct knowledge
4 that Superintendent McMahon spoke to
5 anyone particularly and told them to
6 postpone the drug test?

7 A. He doesn't have to speak to
8 anybody. His chain of command. They have
9 to get his approval for the drug test, and
10 they have to get his approval for
11 postponing. Chain of command. It starts
12 from the superintendent and works its way
13 down. IAB is not going to say we're going
14 to drug test them without his approval.
15 If you read the manual, it states
16 Superintendent McMahon, on the first page,
17 everything contained in this manual is
18 under his orders.

19 Q. When you were working for New

94979
20 York State Police yourself, everything
21 that you did in the course of your duties
22 you were ordered to do by Superintendent
23 McMahon?
24 A. well, it was by my sarges who
25 was ordered by their captains who was

282

1 WYNDER
2 ordered by their superiors which was set
3 out by the rules and regs. Yes, my job
4 was based on what Superintendent McMahon
5 ordered me to do, do my job.
6 (Brief recess taken.)
7 BY MS. ODESSKY:
8 Q. Mr. Wynder, would you turn to
9 paragraph 81, which is on page 19 of the
10 third amended complaint.
11 Do you see that?
12 A. Yes.
13 Q. That reads as follows: "Upon
14 information and belief, Spahl, McMahon and
15 others leaked the reason for postponement
16 of the drug test to other troopers in an
17 effort to cause troopers to disassociate
18 themselves with plaintiff."
19 Did I read that correctly?
20 A. Yes, you did.
21 Q. What information do you have
22 that Captain Spahl particularly leaked the

94979
23 reason for postponement of the drug test
24 to other troopers?
25 A. On the fact that the sarges knew

1

283

1 WYNDER

2 that they postponed it before I came

3 back -- until I came back, and also for

4 the fact that Spahl has his own commander

5 that's in charge of SP Hawthorne. He also

6 has authority to request that it be

7 postponed, also.

8 Q. what particular information did

9 you have, not that he postponed it, or

10 requested for it to be postponed, but

11 specifically that he leaked the reason for

12 the postponement?

13 A. I don't understand.

14 Q. I know you've said that you

15 believe that Captain Spahl himself

16 requested the postponement, correct?

17 A. Correct.

18 Q. But in paragraph 81 you say that

19 Spahl, McMahon and others leaked the

20 reason for the postponement; in other

21 words, they told other troopers, according

22 to you, why the test was being postponed,

23 correct?

24 A. Yes.

25 Q. what do you base that on?

94979

□

284

1

WYNDER

2

A. Knowledge that the troopers told

3

me and sarges told me that they were told

4

that it was postponed until I came back.

5

And everything -- again, everything is

6

done by chain of command and everybody

7

knew in SP Hawthorne that I was a target

8

of division.

9

As I spoke to you before, I had

10

no problems with my sarges, station

11

commanders. I was an outstanding,

12

excellent evaluated trooper. I never had

13

any problems that started from my

14

immediate superiors. All my complaints,

15

allegations came from division.

16

So it was common knowledge

17

throughout division, the grapevine in the

18

State Police is very quick and very real

19

and everybody knew that Trooper Wynder was

20

being targeted to be fired by the Division

21

of New York State Police.

22

Q. Did any officer or trooper or

23

sergeant specifically tell you that

24

Captain Spahl told them why the drug test

25

was being postponed?

□

285

94979

1 WYNDER

2 A. I believe it was one of my
3 sarges in station command said that he was
4 postponing it until I came back.

5 Q. And the sergeant told you that
6 Captain Spahl specifically told him that?

7 A. Well, Captain Spahl asked for
8 the Purse 29 which is also in the future
9 schedules and requested to know when I was
10 returning to work, and that's when Spahl
11 reiterated the fact that he needed to know
12 when I came back to work so they can have
13 the drug test.

14 Q. Who did he tell that to?

15 A. The sarges.

16 Q. Was that Zemanek, Antalek and
17 Smosky?

18 A. Or Smosky. It would either be
19 one of those three.

20 Q. But you don't remember now which
21 one it could have been?

22 A. No, again, I was out on sick
23 leave.

24 Q. So how did you learn that
25 Captain Spahl asked one of these three

286

1 WYNDER

2 sarges about when you were returning to
3 work? How did you get that information?

94979

4 Did they tell you?

5 A. Again, for the record, when the
6 tests came that day, the first business
7 day that I returned, everybody in the
8 station laughed and said, "We know who
9 it's for."

10 I mean I am a trained trooper,
11 law enforcement. It doesn't take an idiot
12 to realize that there's never been a drug
13 test in this station, and as soon as I
14 come back to work, the first day, Internal
15 Affairs is there.

16 Q. I don't want to cut you short,
17 but I think you might have misunderstood
18 my question. My question was
19 specifically -- you said that one of three
20 sergeants, either Sergeant Zemanek,
21 Sergeant Antalek or Sergeant Smosky, was
22 told by Captain Spahl that he wanted to
23 know when specifically you were returning
24 to work so that he could do the drug test
25 then, correct? Am I correct?

287

1 WYNDER

2 A. Correct.

3 Q. How do you know that Captain
4 Spahl told one of those sergeants?

5 A. One of them told me. I don't
6 remember which sergeant it was, but,

94979

7 again, as I told you, what I'm telling you
8 is what was said to me.

9 Q. One of those three, although you
10 can't be certain which one, one of those
11 three told you that?

12 A. Correct.

13 Q. Now, also in paragraph 81, you
14 say: "Upon information and belief, Spahl,
15 McMahon and others leaked the reason."

16 what is your information that
17 McMahon leaked the reason for postponement
18 of the drug test?

19 A. Again, everything is done by
20 chain of command. Everything that has to
21 be done has to have the approval of
22 McMahon. This is how the State Police
23 works. It's a paramilitary organization.
24 You do not do anything unless you have
25 approval from your superior officers.

□

288

1 WYNDER

2 Q. Now turning to paragraph 82, it
3 reads as follows: "As a consequence of
4 the actions of the defendants, plaintiff
5 has been and continues to be denied equal
6 employment opportunity and subjected to
7 retaliation in violation of constitutional
8 rights."

9 when you say you were denied

94979

10 equal employment opportunity, what you do
11 you mean?

12 A. I was no longer allowed to do my
13 job as a New York State trooper.

14 Q. How were you not allowed to do
15 your job?

16 A. Well, every time I turned
17 around, I was being brought up on charges,
18 ridiculous charges that have never been
19 brought up on troopers at the station. I
20 was being harassed by my commanding
21 officer -- at that time was a zone
22 commander which was Spahl. So I was
23 unable to do my job, which I had a right
24 to do my job. A job which, again, I had
25 outstanding and excellent evaluations. I

□

289

1 WYNDER

2 led my station in all activities, tickets,
3 arrests, penal law, DWIs. I had all kinds
4 of letters for outstanding work, but I was
5 not allowed to do my job.

6 And also, after some of my
7 hearings were over, after I was found not
8 guilty, the State Police continued to
9 harass me by contacting the FBI, the
10 United States Department of Justice, the
11 DA --

12 Q. We'll get to that. I don't mean
Page 71

94979

13 to cut you off, but we're getting to
14 that.

15 I'd ask to you to turn to
16 paragraph 185 on page 20. That reads:
17 "Upon information and belief, Spahl and
18 Masterson communicated frequently to
19 utilize the full power of IAB against
20 plaintiff."

21 Did I read that correctly?

22 A. Yes, you did.

23 Q. When you say that "Spahl and
24 Masterson communicated frequently," are
25 you referring to them talking in person,

290

1 WYNDER

2 them talking on the phone or in writing?
3 How would they communicate?

4 A. Probably by phone, probably in
5 person. Spahl used to work for Masterson
6 in Internal Affairs. As a matter of fact,
7 he had just left Internal Affairs to come
8 to SP Hawthorne.

9 Q. How do you know that they
10 communicated by phone?

11 A. Well, a couple of times I picked
12 up the phone and it was Captain Masterson
13 asking to speak to Captain Spahl.

14 Q. Do you know what he was asking
15 to speak to him about?

94979

16 A. That was none of my business,
17 ma'am.

18 Q. I'm going to ask you to look at
19 paragraph 86. It reads as follows: "Upon
20 information and belief, under orders from
21 McMahon and Masterson, plaintiff's name
22 was placed on a blackboard in IAB and
23 outlined in red to signify that plaintiff
24 had been singled out for specific
25 discriminatory treatment by NYSP."

□

291

1 WYNDER

2 Did I read that accurately?

3 A. Yes, you did.

4 Q. Where was that blackboard?

5 A. In Internal Affairs' office in
6 Albany, New York.

7 Q. Did you see this blackboard?

8 A. No, I was told by the president
9 of PBA, Al Welford, and Trooper Mckenney.

10 Q. What did Al Welford tell you
11 specifically about the blackboard?

12 A. That he was in the office and he
13 could not believe that when the door
14 closed, my name was highlighted in red on
15 a board.

16 Q. Did Welford know who had put
17 your name on the board?

18 A. It's an Internal Affairs' board,
Page 73

94979

19 so apparently we deducted from our police
20 training that Internal Affairs is the ones
21 who put it up there.

22 Q. Was he able to tell you any
23 specific officers that put the name there?

24 A. They were all black names that
25 were on the board.

□

292

1 WYNDER

2 Q. But was Al Wolford able to tell
3 you specifically what officer from
4 Internal Affairs actually put your name on
5 the blackboard?

6 A. No.

7 Q. You said there was someone else
8 besides Al Wolford who told you about the
9 blackboard?

10 A. Trooper McKenney.

11 Q. What did he tell you?

12 A. He couldn't believe that his
13 name was up there, also, along with other
14 black troopers and investigators.

15 Q. Did Trooper McKenney tell you
16 specifically that he had seen the
17 blackboard?

18 A. Yes, he did.

19 Q. Other than your name being on
20 the blackboard, was there anything else
21 that was on the blackboard besides your

94979

22 name?

23 A. It was just outlined in red.

24 Q. Was yours the only name that was
25 outlined in red?

□

293

1 WYNDER

2 A. I believe that's what he told
3 me, that mine was the only one.

4 Q. Did Officer Mckenney tell you
5 specifically which officer put your name
6 on the blackboard?

7 A. Again, him and wolford saw it at
8 the same time. They did not see who put
9 the names up there.

10 Q. Looking at paragraph 87 that
11 reads as follows: "Upon information and
12 belief, other troopers were allowed to
13 view the IAB board and were told why
14 plaintiff's name was placed on the board
15 and outlined in red to further chill
16 plaintiff's right to free association with
17 other workers."

18 Again, did I read that
19 correctly?

20 A. Yes, you did.

21 Q. Again, the information in
22 paragraph 87, does that come from Al
23 wolford and Trooper Mckenney?

24 A. Yes, they were told that I was
Page 75

94979

25 targeted, that they were going after my --

294

1 WYNDER

2 they were investigating me because I was,
3 again, as you stated before, where do they
4 get the dirty cops from, that I was dirty.

5 Q. Other than the fact that you
6 were being investigated for being dirty,
7 were they told anything else?

8 A. No, that I was investigated
9 because I was dirty. They didn't get into
10 specifics. Just that they were told that
11 I was a target.

12 Q. Other than Al Wolford and
13 Trooper McKenney, was anybody else aware
14 of your name being placed on that board
15 and the fact that you were being told that
16 you were on the board because you were a
17 dirty cop?

18 A. I believe one or two other
19 troopers, I don't remember their names,
20 they were on the board. They found out
21 that they were on the board, also, and
22 they inquired and they said it was for
23 dirty cops.

24 Q. Other than Al Wolford and
25 Trooper McKenney, did you ever visit this

94979

295

1 WYNDER
2 situation regarding the blackboard with
3 anyone else that you can recall?
4 A. I spoke to my PBA and Don
5 Postals (phonetic), which was my Troop K
6 delegate, he also knew about the
7 blackboard and he also knew how I felt
8 about it.
9 Q. Did you tell him about the
10 blackboard or did he tell you?
11 A. He already knew.
12 Q. What did he tell you?
13 A. He had heard. He was shocked
14 that Welford, who had told him who was his
15 president, and also Trooper McKenney
16 confirmed what had happened.
17 Q. Did Don Postals tell you
18 anything else about the blackboard?
19 A. That he would look into it and
20 see what he could do to find out why my
21 name was up there.
22 Q. Did he ever get back to you?
23 A. No.
24 Q. I'd ask you to turn to paragraph
25 91 on page 21 that reads as follows:

□

296

1 WYNDER

94979

2 "During 1989 plaintiff properly reported
3 a weapon stolen while he traveled on a
4 flight from New York to California."

5 Did I read that correctly?

6 A. Yes, you did.

7 Q. Can you explain to me the
8 circumstances under which your weapon was
9 stolen when you traveled from New York to
10 California?

11 A. Yes. It was myself, inspector
12 Chris Downing, Trooper Keith Forte, and we
13 took a vacation trip to Los Angeles.

14 Q. Is Christopher Downing the
15 individual who you were in the business
16 with?

17 A. Correct.

18 Q. Was he working for the
19 Department of Customs at the time?

20 A. Yes, he was.

21 Q. Why did you go to Los Angeles?

22 A. Vacation.

23 Q. Did your trip also have anything
24 to do with your business?

25 A. No.

297

1 WYNDER

2 Q. What happened when you arrived
3 at Los Angeles?

4 A. Before we left, we flew out of

94979

5 LaGuardia. As required by law, we went,
6 put all our weapons into Keith Forte's
7 weapon's storage box. We had the airport
8 declare firearms declaration --

9 Q. Can I ask you how many weapons
10 you had that you put into the storage box?

11 A. We each carry one weapon each.

12 Q. What was your weapon?

13 A. Nine millimeter Smith & Wesson,
14 669.

15 Q. What happened once you put it
16 into the storage box?

17 A. They locked it up, they put the
18 declaration tag -- at the time we thought
19 they put it on correctly, but apparently
20 they put it on wrong. The declaration tag
21 is supposed to go inside the box. They
22 put it on the outside of the box, and then
23 we were told to go to the plane and we'll
24 pick up our weapons when we -- when we
25 arrive in California.

□

298

1 WYNDER

2 Q. Did you pick up the weapons in
3 California?

4 A. No. What happened was we had a
5 delay, we had hydraulic problems. We had
6 the FEM -- transferred us to another
7 airline -- they call it FEM, where they

94979

8 transfer you to another airline because we
9 no longer had a direct flight to
10 California.

11 Q. If you didn't go directly, where
12 did you go?

13 A. I think we went to -- I'm not
14 quite sure. It could have been St. Louis,
15 Arizona. I don't know where the plane
16 landed. We picked -- we got on another
17 plane and we arrived in California.

18 Q. What happened when you arrived
19 in California?

20 A. We went back to the hotel and we
21 were getting ready to go out to meet
22 associates of Keith Forte --

23 Q. Prior to leaving the airport in
24 Los Angeles, did you retrieve the storage
25 box?

299

1 WYNDER

2 A. Yes, we did.

3 Q. Who retrieved the box?

4 A. Keith Forte.

5 Q. Where did he get the box from?

6 A. From wherever you pick up your
7 luggage.

8 Q. Were you with him when he
9 retrieved the storage box?

10 A. We were all together, but he had

94979

11 to go in and sign for it because it was
12 his personal case.

13 Q. Then you went back to the
14 hotel. What hotel did you go to?

15 A. I don't recall.

16 Q. What happened when you arrived
17 at the hotel?

18 A. We took a shower, got dressed
19 and we went to retrieve our weapons, at
20 which time I noticed that mine was
21 missing.

22 Q. When you say you went to
23 retrieve the weapons, where did you
24 retrieve them from?

25 A. We opened up the case.

300

1 WYNDER

2 Q. Where was the case when you got
3 to the hotel?

4 A. The case was with us all the
5 time. The case was in the room.

6 Q. Was Mr. Downing's weapon there?

7 A. Yes.

8 Q. And Mr. Forte's weapon?

9 A. Yes.

10 Q. Yours was the only weapon that
11 was not?

12 A. Correct.

13 Q. Were either of the other

94979

14 weapons, were they disturbed in any way or
15 damaged?

16 A. No.

17 Q. what did you do when you noticed
18 that your weapon was missing?

19 A. I panicked.

20 Q. what did you do then?

21 A. well, we panicked. we didn't
22 know where the weapon -- I thought they
23 were playing a joke on me and then they
24 said no, they weren't playing a joke and
25 that they wanted to -- they -- we were all

□

301

1 WYNDER

2 upset now. So, the first thing I did was
3 call SP Peekskill, Sergeant Welsh.

4 Q. Did you speak to Sergeant Welsh
5 at that time?

6 A. Of course, I had to, he's my
7 station commander.

8 Q. what did you tell him?

9 A. Advised him that my gun was
10 stolen.

11 Q. what did he tell you to do?

12 A. Go back to the airport, file a
13 report and that he would take care of
14 matters on his end until I got back to New
15 York.

16 Q. when he said take care of

94979
17 matters on his end, what did he mean?
18 A. He would take care of it by
19 reporting it. I had did my job, he said,
20 I reported it to him. I did what I was
21 supposed to do.
22 Q. Is there paperwork that you
23 understand has to be filled out when
24 there's a gun that's stolen or missing
25 from State Police?

302

1 WYNDER
2 A. No, there's no paperwork.
3 There's an EDP form that you get every
4 year.
5 Q. I'm sorry?
6 A. EDP form. It's sent to you by
7 Pistol Permit.
8 Q. That's something that you fill
9 out on a yearly basis?
10 A. Yes. At the beginning of each
11 year or the middle of the year, whenever
12 they send it out, you get it once a year,
13 it has the weapons that are under your
14 shield that you are carrying, and you're
15 supposed to initial that these weapons are
16 in your possession.
17 And at the time of the incident,
18 I went back to Los Angeles airport, I
19 filed a missing report for my gun and they

94979
20 said that they had to now file it
21 everywhere because they didn't know where
22 it was stolen from, that meant Kansas City
23 or St. Louis, they had to report it to
24 that authority. They had to report it to
25 Port Authority. They had to report it to

□

303

1 WYNDER
2 NYPD and they would also report it to New
3 York State Police, which I did, also.
4 Q. Is it your understanding that
5 other than the EDP form that you file once
6 a year, that there's no specific paperwork
7 that you have to fill out if your gun is
8 lost or stolen?
9 A. Well, I found out later that
10 File 25 is supposed to be sent, but that's
11 not supposed to be sent by me, that's
12 supposed to be sent by the sergeant.
13 Q. Do you know whether that was
14 sent?
15 A. I didn't find out that that
16 wasn't sent until -- let's say nine years
17 later.
18 Q. Other than the File 25 that was
19 to be sent by the sergeant, was there any
20 other paperwork that you were supposed to
21 fill out for New York State Police
22 regarding the gun?

94979
23 A. The EDP form. I filled out the
24 EDP form where it stated that -- do you
25 have this gun in your possession? On that

304

1 WYNDER
2 paper I wrote, "Gun stolen out of
3 LaGuardia, gun is not in possession of
4 member."
5 Q. How long after the gun was
6 missing did you fill out that EDP form
7 saying the gun was stolen?
8 A. When they sent it down. I don't
9 recall when.
10 Q. After you reported the gun to
11 the Los Angeles police and they reported
12 it in turn to various other police
13 departments, as well as New York State
14 Police, did you do anything else in
15 connection with the gun?
16 A. Yes, I retrieved my gun.
17 Q. When did you retrieve it?
18 A. I don't remember the date.
19 Could have been somewhere in May of
20 nine -- I'm --
21 Q. If you look at paragraph 9 --
22 A. What year?
23 Q. It says March of 1990; is that
24 accurate?
25 A. Yeah, around that time. Around

94979

305

1 WYNDER
2 that time. It was recovered.
3 And I had to get a letter from
4 division on letterhead stating that I was
5 fit for full strenuous duty and that they
6 were notified that I was retrieving my gun
7 from NYPD.

8 Q. Let me just back up for a
9 moment.

10 Between the time that you were
11 in Los Angeles and the gun was lost or
12 stolen until the time that you retrieved
13 the gun, did you return to duty?

14 A. Of course.

15 Q. What did you use instead of that
16 gun?

17 A. Well, first of all, that gun
18 that you are questioning about was my own
19 personal gun, not division's gun.

20 Q. So you had another gun that was
21 issued to you by division that you used
22 while you were on duty?

23 A. Correct. That is the gun that a
24 File 25 must be sent if your gun is stolen
25 or lost or fired. But this was my own

306

94979

1 WYNDER

2 off-duty personal gun.

3 Q. So just to clarify, you are
4 saying that your understanding is that if
5 your State Police-issued gun is lost or
6 stolen, the File 25 must be sent?

7 A. Yeah. That I know. That would
8 have been a whole investigation if I had
9 lost my own personal -- I mean the gun
10 that was issued by division.

11 Q. Did you have an understanding or
12 a belief as to whether your gun was just
13 misplaced or actually stolen by someone?

14 A. Repeat that.

15 Q. Did you believe that the gun was
16 just misplaced at the airport or did you
17 believe it to be stolen by someone? What
18 did you believe happened to it?

19 A. No, it was stolen. When we
20 opened up the case, you could see where it
21 had been pried open.

22 Q. The case had been pried open?

23 A. Yes. After we opened it and I
24 further examined it, you could see where
25 it was popped open.

□

307

1 WYNDER

2 Q. So you are saying the case has,
3 like, a lock on it?

94979

4 A. Of course. We had to lock it.
5 Firearms. It's firearms. It's a lock --
6 if you've ever seen a firearms case, it
7 has to be locked. That's the only way you
8 can transport weapons.

9 Q. So the lock on the case was
10 completely broken?

11 A. It was pried up, you could see
12 where they popped it up, raised it on the
13 side to get the gun out.

14 Q. Did the Los Angeles Police
15 Department do any investigation regarding
16 the case being pried open, take photos of
17 it?

18 A. Yeah. Uh-huh.

19 Q. Who conducted that
20 investigation, if you can recall?

21 A. I don't know. It was a
22 sergeant.

23 They took a picture. I believe
24 he wrote down -- he took the serial
25 number, which is the most important, and

□

308

1 WYNDER
2 he told us, "If we find a gun, we'll let
3 you know. Good luck."

4 Q. Did you have any idea of who had
5 stolen the gun or any suspicion of who had
6 stolen it?

94979

7 A. Someone who handle the baggage.

8 Q. Other than that, you didn't have
9 any particular suspicion?

10 A. No.

11 Q. You said that you now retrieved
12 the gun.

13 How did the gun come to be back
14 in your possession?

15 A. It was found in the possession
16 of a woman who was found with two other
17 automatics and 125 vials of crack, and her
18 statement was that she had got it from her
19 boyfriend who had got it from a baggage
20 handler who worked at LaGuardia who stole
21 the gun and sold it to him.

22 Q. Do you remember that woman's
23 name?

24 A. No, it's on the report. I
25 believe her name -- I think it's Cynthia

□

309

1 WYNDER

2 Jenkins.

3 Q. Did you know Cynthia Jenkins
4 before you saw her name on that report?

5 A. No, I did not.

6 Q. I'm going to ask you to look at
7 paragraph 93 on the top of page 22. It
8 reads as follows: "That New York City
9 police required that plaintiff produce a

94979

10 letter from his own sergeant before they
11 would release the weapon to plaintiff."

12 Did I read that accurately?

13 A. Yes, you did.

14 Q. Did you consider that to be
15 unusual, that they required this letter?

16 A. What, NYPD?

17 Q. Yes.

18 A. No, not after they explained to
19 me. They have a rubber gun squad --

20 Q. What does that mean?

21 A. Members who are sick, out on
22 disciplinary, whatever, they can carry
23 their shield and ID, but they can't carry
24 a gun. So they wanted to make sure --
25 see, State Police works differently. You

□

310

1 WYNDER

2 either carry or you don't. So as long as
3 you are fit for full strenuous duty as a
4 State Trooper, you can carry your weapon.

5 NYPD works differently, so
6 that's why they asked for that letter.

7 Q. They wanted to make sure that
8 you were not someone who was not able to
9 carry a weapon but trying to get one?

10 A. Correct.

11 No, not get one, but try to get
12 back a weapon that maybe the job told me I

94979

13 couldn't carry.

14 It's self-explanatory. I mean
15 NYPD, 30,000 members, a lot of them don't
16 carry guns. I mean I wasn't upset about
17 it.

18 Q. In paragraph 94, it indicates
19 that you were in fact given a letter from
20 Sergeant Antalek, correct?

21 A. Correct.

22 Q. And 95 indicates that after the
23 weapon was returned to you, you would
24 report it in your possession each and
25 every year to the New York State Police?

311

1 WYNDER

2 A. Correct. The EDP form was given
3 to me every year, which I put on the
4 second one when I got the gun back that my
5 gun was returned to me, and after that,
6 for the next following years, I always
7 initialed that form as soon as the weapon
8 was in my possession.

9 Q. In paragraph 96, you indicate
10 that: "Even though the weapon was
11 reported by plaintiff each year, NYSP
12 continued to carry the weapon in their
13 NYSPIN computer system as stolen."

14 Did I read that correctly?

15 A. Correct.

94979

16 Q. Can you explain to me what you
17 meant by paragraph 96?

18 A. Well, after the weapon was
19 returned to me, either NYPD or the State
20 Police failed to properly take the weapon
21 out of the database under the serial
22 number as recovered.

23 Q. And you don't know, as you sit
24 here today, whether it was NYPD or the New
25 York State Police who failed to take it

□

312

1 WYNDER

2 out of the computer system?

3 A. Well, New York State Police
4 should have followed up on on it. Once I
5 told them that my gun was back in my
6 possession, State Police has an
7 obligation, because they handle all
8 permits and licenses to carry for the
9 State of New York. So they were obligated
10 to straighten out the status of my weapon,
11 which they failed to do so.

12 Q. Who did you tell that the weapon
13 was recovered? Who did you report that
14 to?

15 A. What do you mean?

16 Q. When the weapon was retrieved,
17 you were notified by NYPD, correct?

18 A. Correct.

94979

19 Q. Once you were notified by NYPD
20 that the weapon was retrieved, who did you
21 tell in State Police?

22 A. Sergeant Antalek.

23 Q. Were you the first person in New
24 York State Police that was told or would a
25 commanding officer at New York State

□

313

1 WYNDER

2 Police be told about your gun and they
3 would tell you?

4 A. They wouldn't have to. NYPD
5 contacted me personally, because it was an
6 off-duty gun. It was a complaint that was
7 filed by me, so the first person they are
8 going to contact is me.

9 Q. Did Sergeant Antalek tell you
10 that you had to fill out any particular
11 paperwork?

12 A. No. He said, "Go get your
13 gun." I went down to get my gun and
14 that's when I was told by NYPD that I had
15 to have a letter from them, and then I had
16 to go all the way back to Hawthorne and
17 get a letter from him and then bring it
18 back to NYPD to get my gun.

19 Q. Looking at paragraph 97: "Upon
20 information and belief, McMahon ordered
21 Barbara to conduct a criminal

94979

22 investigation against plaintiff in the
23 year 1997 and use as the basis for the
24 investigation plaintiff's stolen weapon."
25 Did I read that correctly?

□

314

1 WYNDER

2 A. Yes, you did.

3 Q. First of all, how do you know
4 that a criminal investigation was
5 conducted?

6 A. How do I know that a criminal
7 investigation was conducted?

8 Q. Yes.

9 A. One, this was -- we're talking
10 1997?

11 Q. Yes.

12 A. And we're talking about
13 something that happened in 1989? In the
14 administrative charges, if there were to
15 be any would not stand up under
16 administrative rules and regs under New
17 York State Police. You have an 18-month
18 bar on complaints that are over 18 months
19 old.

20 So, therefore, we're going back,
21 what, '89, '97, eight years, and the only
22 complaints that could continue to stay
23 open that long would have to be criminal
24 charges.

94979

25 Q. Any other reason that you

□

315

1 WYNDER

2 believe that this was a criminal
3 investigation?

4 A. Yes. Lieutenant Barbaria
5 testified in 1998 -- actually 1997, in
6 December, that he had got from a
7 confidential informant that I had traveled
8 to California and killed a drug dealer in
9 the commencement of a drug deal that went
10 bad.

11 Q. Was that the first time that you
12 had heard that, when Lieutenant Barbaria
13 testified?

14 A. As to this confidential
15 informant?

16 A. Yes.

17 Q. Yes.

18 A. Yes, at my hearing.

19 Q. Were you surprised to hear
20 Lieutenant Barbaria speak about the
21 testimony of the confidential informant?

22 A. Of course I was.

23 MR. MERRITT: I'll have to
24 object to that because there is no
25 evidence that there was testimony by a

□

94979

316

1 WYNDER
2 confidential informant.
3 MS. ODESSKY: I misspoke.
4 Q. The information from the
5 confidential informant, you were surprised
6 by that?
7 A. Of course I was. I've never
8 committed a crime in my life.
9 Q. Did you have any understanding
10 of where that information would have come
11 from?
12 A. I believe the State Police made
13 it up.
14 Q. Do you have a belief as to any
15 particular person that made that
16 information up?
17 A. Well, during my training,
18 information with the State Police, it
19 would have to be chief inspector with
20 Internal Affairs -- it could have been
21 anybody, but being the fact that Masterson
22 was head of Internal Affairs and that he
23 didn't like me, I would assume Captain
24 Masterson was in charge of that and that
25 it had to be signed off by McMahon to go

317

1 WYNDER

94979
2 back into my personnel file and go back
3 nine years.

4 Q. That assumption that it was
5 Captain Masterson, what did you base that
6 on?

7 A. The fact that Masterson, when I
8 was at the Academy said that he would keep
9 an eye on me and he also was close friends
10 with Captains Spahl and Masterson, was
11 still in Internal Affairs and this was
12 where this was coming from, and of course
13 anything that he needed to do to me he had
14 to get it from McMahon -- McMahon's
15 approval.

16 Q. That was again, based upon your
17 understanding that that's how the chain of
18 command works, that McMahon would have to
19 approve these things?

20 A. Of course. I mean you have to
21 look at it -- you're going back nine
22 years. Under Civil Service Laws, Section
23 75, you cannot commence any investigations
24 or any punishment to any member for
25 anything that was done administratively

318

1 WYNDER

2 after 18 months.

3 we're talking eight years, so it
4 had to be a crime and you have to get

94979

5 approval by McMahon.

6 Again, chain of command.

7 Q. I'm going to direct your
8 attention to paragraph 101, that's on the
9 bottom of page 23.

10 Do you see that?

11 A. 103.

12 Q. 101.

13 A. 101. Okay.

14 Q. At the bottom of page 23. It
15 says, "McMahon, Masterson and Barbaria all
16 knew that the gun investigation was a hoax
17 and a fraud from inception, but they
18 continued the investigation in an effort
19 to turn up any evidence of wrongdoing that
20 they might be uncovered to terminate
21 plaintiff's employment."

22 A. Yes.

23 Q. Did I read that correctly?

24 A. Yes, you did.

25 Q. Again, is that what's written in

319

1 WYNDER

2 paragraph 101, does that go along with
3 your belief that the information from the
4 confidential informant was made up by the
5 New York State Police?

6 A. Yes, it was. This was all a
7 fishing expedition targeted at a black man

94979
8 to get him removed from State Police.
9 Everybody -- not everybody but society has
10 a prevalent way of associating drugs with
11 blacks, so this was a very good
12 opportunity for the State Police to use
13 anything to discredit me, and as far as
14 this being a hoax, they already knew that
15 this gun investigation was over nine years
16 old, eight years old, I'm sorry, and the
17 fact that they could do nothing to me.
18 They had to brush it up and make it more
19 enticing in order to continue the
20 investigation; and one way would be by
21 falsifying a confidential source and then
22 using the gun by saying that I went to
23 California to commit a murder.
24 Now, as farfetched as that would
25 be to any trained law enforcement -- do

1 WYNDER
2 you have a name, are you going to call Los
3 Angeles Police Department and state, Hey,
4 by the way, eight years ago, did anybody
5 get murdered? So they knew that the only
6 statute of limitations that can stay open
7 forever is murder. So they knew that this
8 was the only way that they can continue to
9 investigate me forever.
10 Q. why did they want to investigate

94979

11 you?

12 A. Because I was black and they
13 wanted me off the job and I had called
14 them racist and I had pointed out racist
15 and discriminatory things that the State
16 Police does. I worked for them and I was
17 not following orders, and what I mean by
18 following orders, I wasn't going along
19 with the discriminatory practices that the
20 New York State Police practices on a
21 common basis.

22 Q. Were you ever told that you did
23 not report the gun correctly, either when
24 it was stolen or when it was returned to
25 you?

321

1 WYNDER

2 A. Yes, they used that as -- their
3 reasoning for why they looked into it, but
4 if you look at --

5 Q. who told you that, that you
6 didn't report it properly?

7 A. Lieutenant Barbaria.

8 Q. what particularly did he tell
9 you about what was not done properly?

10 A. That my gun was not reported to
11 the New York State Police.

12 Q. Did you tell him that you had
13 reported it to Sergeant Welsh?

94979

14 A. Well, we have a problem on that
15 I spoke to Lieutenant Barbaria. I didn't
16 speak to Lieutenant Barbaria until after
17 charges were preferred against me. That's
18 not correct.

19 Lieutenant Barbaria brought me
20 in in September to do a statement from
21 Internal Affairs on an inquiry into my
22 gun. He stated that I did not report it
23 to New York State Police. I informed him
24 that I did report my gun.

25 Q. was he saying that you didn't

□

322

1 WYNDER

2 report the gun when it was stolen or that
3 you didn't report the return of it or
4 both?

5 A. No, he said I did not report my
6 gun stolen to New York State Police. I
7 informed them that I did, and, also, in
8 his own reports, as we've handed over in
9 discovery, his so-called confidential
10 informant, quote, stated that I went to
11 California, and the reason why I reported
12 my gun stolen to my employer, the New York
13 State Police, was to cover-up a murder.

14 So Lieutenant Barbaria knew that
15 my gun was reported stolen to the New York
16 State Police. He knew that. And then he

94979

17 also told me --

18 Q. Let me ask you another question,
19 because we're getting a little far from my
20 question here.

21 You were asked at some point,
22 called in by Lieutenant Barbaria to give a
23 statement --

24 A. Yes.

25 Q. -- regarding the gun situation?

□

323

1 WYNDER

2 A. Yes.

3 Q. Prior to that time, had you ever
4 been asked by someone in the New York
5 State Police to give a sworn statement?

6 MR. MERRITT: About the gun?

7 Q. About anything in connection
8 with your employment.

9 A. Up until that time have I
10 been --

11 Q. Up until the time you were
12 called in by Lieutenant Barbaria.

13 MR. MERRITT: We're talking
14 about September 17, 1997. Up until that
15 time.

16 A. Not that I can recall. I
17 probably might have. I can't answer that
18 question truthfully without knowing -- I
19 have to refresh my memory.

94979
20 Q. How about the incident regarding
21 the Newburgh -- City of Newburgh police,
22 did you give a statement in connection
23 with that?
24 A. Yes, any statement would have to
25 be under oath.

□

324

1 WYNDER
2 Q. That was prior to you being
3 called in by Lieutenant Barbaria, correct?
4 A. Correct.
5 Q. For the gun on September 17,
6 1997?
7 A. Correct.
8 Q. You say in your complaint,
9 specifically under paragraphs 107 and 108,
10 basically that by taking the statement,
11 your rights were violated, and the
12 statement was conducted in violation of
13 the provisions of a collective bargaining
14 agreement between NYSP and the New York
15 State Police Benevolent Association?
16 A. That's correct.
17 Q. Can you tell me, what is your
18 understanding about what was wrong with
19 Lieutenant Barbaria taking a statement
20 from you regarding this gun situation?
21 A. Well, first of all, he lied to
22 me in the fact that he never read me my

94979

23 Miranda Rights.

24 Q. Let me ask you, when you had
25 given a statement previously regarding the

□

325

1 WYNDER

2 City of Newburgh situation, were you read
3 your Miranda Rights prior to giving that
4 statement?

5 A. No.

6 Q. So why was it your understanding
7 that you should be read your Miranda
8 Rights in connection with this particular
9 statement?

10 A. Because the Newburgh case was
11 administrative charges. I believe this
12 was a criminal investigation, drugs, guns,
13 and anything that I say can or would be
14 used against me in a court of law; and,
15 apparently, from discovery, as we found
16 out now, that there was a criminal
17 investigation going on and anything --

18 Q. What was the basis for your
19 belief that there was a criminal
20 investigation going on?

21 A. The basis?

22 Q. Yes. You said it was through
23 discovery that you've learned there was a
24 criminal investigation.

25 What's the basis for you now

94979

326

1 WYNDER
2 saying there was a criminal investigation?

3 A. A memo from captain -- not
4 captain, Colonel Young to Colonel Shepley
5 (phonetic) in regards to a criminal
6 investigation that was conducted by
7 Captain Klusacek and whose report was
8 forwarded to the U.S. Attorney to have
9 criminal charges brought against Trooper
10 Wynder.

11 Q. Do you know what those criminal
12 charges were, in connection with what
13 conduct by you?

14 A. Well, we're still waiting for
15 you to release that information to us. We
16 requested in a document demand that you
17 release that report that was sent to you
18 my by attorney and we've been denied that.

19 Q. I'm just asking you whether you
20 know what the charges were without
21 specifically talking about that document.

22 A. Well, how else would I know?
23 Also, the fact that I knew that it had to
24 do with drugs and a murder because
25 Barbara had testified to that at my

327

94979

1 WYNDER

2 hearing and that he had told me.

3 Q. Is there any other reason other
4 than that document that you believe that
5 the statement Lieutenant Barbaria was
6 taking from you was in connection with a
7 criminal investigation.

8 MR. MERRITT: You mean other
9 than what he just testified to?

10 Q. Other than what you just told
11 me.

12 A. What do you mean?

13 Q. You just told me that the basis
14 for your belief that Lieutenant Barbaria
15 was conducting a criminal investigation
16 when he took that statement from you on
17 September 17, 1997 was based upon the memo
18 that you were provided in discovery from
19 Colonel Young, correct?

20 A. Uh-huh.

21 Q. Is there anything else that you
22 base --

23 MR. MERRITT: He also testified
24 that Barbaria testified in 1998 that he
25 conducted a criminal investigation --

328

1 WYNDER

2 MS. ODESSKY: Mr. Merritt, hold
3 on --

94979

4 MR. MERRITT: He testified to
5 that fact, as well.

6 MS. ODESSKY: Mr. Merritt, I
7 would ask you to not put answers on the
8 record and to lead the witness in any
9 way. I would really object to that.

10 You've done it on Friday and
11 you've again attempted to do it today. If
12 you want, we'll call the judge --

13 MR. MERRITT: Let's do it right
14 now. Let's stop playing games.

15 You made a wrong statement and
16 you can't retract it, and I'm informing
17 you that you made a wrong statement based
18 upon his testimony. You don't like that?
19 That's fine. Let's call a judge --

20 MS. ODESSKY: If you want to
21 clarify my statement, that's fine.

22 MR. MERRITT: I did that and you
23 interrupted me three times. You've
24 interrupted me three times when I tried to
25 clarify your statement and you keep

□

329

1 WYNDER
2 interrupting me.

3 MS. ODESSKY: You keep
4 interrupting me.

5 MR. MERRITT: I wasn't finished
6 yet.

94979

7 MS. ODESSKY: Go ahead and
8 finish.

9 MR. MERRITT: We'll take a break
10 now. I told you we had to clarify your
11 statement because you made a misstatement.

12 MS. ODESSKY: Are we still on
13 the record?

14 MR. MERRITT: I think she's
15 still taking it down.

16 MS. ODESSKY: Go ahead and
17 clarify my statement. If you want to call
18 the judge over this --

19 MR. MERRITT: Are you going to
20 stop interrupting -- when you stop
21 interrupting me, I'll be glad to speak.

22 MS. ODESSKY: Go ahead.

23 MR. MERRITT: Your previous
24 question and the previous answer to the
25 previous question, you asked Mr. Wynder

□

330

1 WYNDER
2 how he learned about the fact that there
3 was a criminal investigation against him.
4 He first said that there was a memo, then
5 he secondly testified that he learned
6 about it through the testimony of
7 Lieutenant Barbaria at his hearing in
8 1998. He stated that.

9 Then when you came back and
Page 108

94979

10 asked the question again, you said other
11 than the memo, and I said to you, are you
12 also referring to the other thing that he
13 testified, the testimony of Lieutenant
14 Barbaria at his administrative hearing,
15 and you interrupted me four times and
16 threatened to call the judge. That's what
17 it's all about.

18 I'm clarifying your question and
19 his answer, because he answered and told
20 you that one of the sources of his
21 information was direct testimony from
22 Lieutenant Barbaria at his administrative
23 hearing.

24 MS. ODESSKY: Okay. Fine.
25 Thank you.

□

331

1 WYNDER

2 Can we proceed now?

3 MR. MERRITT: No, we're going to
4 take a break.

5 MS. ODESSKY: For the record,
6 the time now is 1:35.

7 Are you taking a lunch break or
8 do you want to continue?

9 MR. MERRITT: I'm taking a short
10 break right now.

11 And we're going to continue. As
12 soon as this room cools down, I'll be

94979

13 back.

14 MS. ODESSKY: There's no reason
15 to put gratuitous remarks on the record.

16 (Brief recess taken.)

17 MS. ODESSKY: I understand what
18 Mr. Merritt's clarification of my last
19 question is.

20 BY MS. ODESSKY:

21 Q. So I'll just ask you,
22 Mr. Wynder, to make it very simple, other
23 than anything that you've already
24 testified to today that we've discussed,
25 is there any other basis for your belief

332

1 WYNDER

2 that Lieutenant Barbaria was conducting a
3 criminal investigation when he took that
4 statement from you on September 17, 1997?

5 A. Yes, that was in July of that
6 year, from the branch manager, Brenda
7 Bennie, who told me that Captain Klusacek
8 and the State Police were conducting a
9 criminal investigation, and also my
10 neighbors who told me that they were
11 conducting a criminal investigation,
12 Preston Felton who was surveilling me.

13 Q. Did he tell you that it was a
14 criminal investigation, Preston Felton?

15 A. No, he didn't have to, but as in
Page 110

94979

16 my experience as a trained officer in the
17 State Police, Internal Affairs only shows
18 up when there's a crime. They are not
19 there for administrative inquiries.

20 And also the fact that I had
21 just had a drug test done prior to that,
22 so I knew that -- those were all my
23 sources that there was a criminal
24 investigation in progress.

25 Q. I'm going to ask you to look at

□

333

1 WYNDER

2 paragraph 109 on page 25.

3 It reads as follows: "The
4 herein referenced sworn statement was
5 taken well after plaintiff received
6 written administrative charges which was
7 in direct violation of Section 3.1, NYSP
8 administrative manual and in direct
9 violation of New York code, rules and
10 regulations."

11 Did I read that correctly?

12 A. Yes, you did.

13 Q. What did you mean when you said
14 it was taken after you received written
15 administrative charges?

16 A. Well, the New York State Police
17 Manual is condensed of ideas and rules and
18 regs that the superintendent wants his

94979

19 members to follow, and then there's also
20 sections in the manual that are stated as
21 NYCRR, which is New York State codes -- it
22 is mandated by the law that these formats
23 have to be followed, and according to 3.1
24 of disciplinary in the New York State
25 Police, a member -- any complaint that is

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334

1 WYNDER
2 filed against a member is to have a
3 complete and thorough investigation done
4 before charges can be preferred to
5 protect, one, the New York State Police,
6 two, the State of New York and three, the
7 member.

8 Q. Hang on, because I think you
9 misunderstood my question.

10 It was specifically with regard
11 to what you wrote in paragraph 109, the
12 referenced sworn statement was taken well
13 after plaintiff received written
14 administrative charges.

15 What written administrative
16 charges are you referring to in that
17 paragraph?

18 A. I'll clarify myself. As I
19 referred to Section 3.1, the State Police
20 on December 27, 1997 preferred charges
21 against me.

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22 Q. which charges were those?

23 A. Those were for bankruptcy fraud
24 and working without approval outside work,
25 which again was in violation of 3.1 which

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1 WYNDER

2 states that, "A complete and thorough
3 investigation must be conducted before
4 charges can be preferred against a
5 member."

6 It is also mandated that this
7 section 3.1 is mandated by legislature
8 which you can find --

9 Q. Yes. With regard to paragraph
10 109, specifically when was the sworn
11 statement taken in relation to the charges
12 preferred against you on December 27,
13 1997?

14 A. I believe those -- that
15 statement that was -- I was forced to take
16 came sometime in January.

17 Q. So you're not referring to the
18 statement taken September 17, 1997?

19 A. No.

20 MR. MERRITT: Let the record
21 reflect that he didn't say the year. So
22 January -- I know it's inferred --

23 Q. Are you talking about January
24 1998?

94979

25 A. Yes, January 1998, to those

□

336

1 WYNDER

2 charges that you're referring to in 109 of
3 the complaint, yes, in January of 1998 is
4 when the State Police first asked me to
5 give a statement to these charges.

6 Q. Looking at paragraph 110, it
7 reads as follows: "A sworn statement was
8 taken from plaintiff on January 20, 1998
9 by Barbara, and prior to commencing the
10 questioning, plaintiff asked Barbara, Am
11 I the target of a criminal investigation,
12 to which Barbara refused to answer."

13 Is it your understanding that
14 during the questioning by New York State
15 Police in general, the taking of a sworn
16 statement, that you are permitted to ask
17 questions of the person taking the
18 statement?

19 A. Rephrase yourself.

20 Q. Is it your understanding that
21 generally, when you have provided a sworn
22 statement to the New York State Police
23 Department in the past, for example, when
24 you did that in connection with the City
25 of Newburgh incident, is it your

□

94979

337

1 WYNDER

2 understanding that you are permitted to
3 ask questions of the person taking the
4 statement from you?

5 A. You are asking me if I have a
6 right to request why they are taking the
7 statement?

8 Q. Yes.

9 A. Yes, as per the PBA contract, I
10 have the right to ask am I a target of a
11 criminal investigation, to invoke my Fifth
12 Amendment rights.

13 Q. Did you ask that question when
14 you were giving the sworn statement
15 regarding the City of Newburgh incident?

16 A. No.

17 Q. why not?

18 A. Because at that time I knew that
19 it was administrative and it was no
20 crime. Under the contract --

21 Q. I'm going to ask you,
22 Mr. Wynder, if you have something to say,
23 you'll have plenty of opportunity to say
24 it but just wait for me to pose another
25 question to you. Thank you.

338

1 WYNDER

94979

2 MR. MERRITT: With regard to the
3 previous question that you asked
4 Mr. Wynder about 3.1 of the contract, you
5 did interrupt him in the middle of his
6 explanation, and I know you wanted to
7 clarify the question, but I would object
8 to the fact that should let him answer the
9 question fully before you interrupt. He
10 was attempting to answer your question
11 with regard to 109 and you stopped him
12 before he finished his answer.

13 MS. ODESSKY: Okay.

14 Q. Mr. Wynder, do you have anything
15 further to say with regard to paragraph
16 109?

17 A. Yes. As I was stating to you,
18 you asked me about this sworn statement,
19 which we now know took place on January
20 20, 1998, and the reason why this is here
21 it's in direct violation of 3.1, as the
22 manual states that you have to do a
23 complete investigation, and in my trained
24 experience as a trooper and as anybody
25 knows, to do a complete and thorough

339

1 WYNDER
2 investigation, you have to contact and
3 talk to everybody; and in this situation,
4 according to rule 3.1, they have to do

94979

5 this because they have to protect me, the
6 State of New York and the New York State
7 Police.

8 So by not contacting me and
9 asking for a statement before they
10 preferred charges against me, the State
11 Police violated their own regulations by
12 not doing a thorough and complete
13 investigation, and, also, I'd like to
14 state for the record not only is this 3.1
15 section in the New York State Police
16 Manual, it is found in the New York State
17 State code of rules and regulations which
18 makes it a law, and in that point the
19 State Police violated the State of New
20 York laws.

21 Q. Thank you.

22 You mentioned before a few
23 minutes ago that charges were preferred
24 against you on December 27, 1997, correct?

25 A. Correct.

□

340

1 WYNDER

2 Q. Those charges included charges
3 related to bankruptcy fraud and working
4 without approval, correct?

5 A. Correct.

6 Q. Now, the working without
7 approval, what did that charge pertain to?

94979

8 A. New York State Police alleged
9 that I had worked with -- that I had
10 worked without their permission, outside
11 employment.

12 Q. What particular outside
13 employment were they talking about?

14 A. My company, For You, as I stated
15 earlier.

16 Q. Was that charge accurate, that
17 you were working without their approval?

18 A. No, that charge was false.

19 Q. Why was it false?

20 A. Well, I'll give you two
21 reasons.

22 One, I never worked for For You
23 Enterprises. I was the president of For
24 You Enterprises. So I was not working for
25 For You Enterprises. To me, that is

□

341

1 WYNDER
2 synonymous with the fact that you own
3 stock in a company and you get a check
4 from the company, is that work? No, it's
5 not.

6 And according to the New York
7 State rules and regulations for working
8 without approval or working outside, you
9 must receive pay for what you are doing
10 for it to be considered outside

94979
11 employment. That means you can volunteer,
12 you can work; as long as you don't receive
13 a paycheck, you are not working outside
14 employment.

15 And also --

16 Q. Can I just stop you right there
17 to clarify?

18 Your contention is because you
19 did not receive a paycheck, that you were
20 not required to report to the New York
21 State Police that you had the For You
22 company?

23 A. Well, the New York State Police,
24 according to their rules and regulations,
25 you must have gainful employment within

□

342

1 WYNDER
2 which you receive remuneration for your
3 work and I did not receive any money or
4 remuneration for any of my services for
5 For You Enterprises, so, therefore, I was
6 not employed outside of the New York State
7 Police.

8 Q. During the time that you had the
9 For You company of which you were the
10 president, did For You make any profits?

11 A. Whatever profits -- we didn't
12 make any profits. We broke even and we
13 kept the money into the business and

94979
14 nobody received any pay. Nobody was paid
15 for work.

16 Q. You told me there was a second
17 reason.

18 what was the second reason?

19 A. I did have approval and I showed
20 you earlier. I had outside approval from
21 my sergeant. Even though I didn't need
22 it, I put it in anyway and I was approved.

23 Q. That was from Sergeant Welsh?

24 A. No, that was Sergeant Smosky, I
25 believe.

1 WYNDER

2 Q. As to the second charge
3 regarding the -- charges regarding the
4 bankruptcy fraud, you did file a
5 bankruptcy petition, correct?

6 A. Yes, I did.

7 Q. Was that petition the first time
8 you filed for bankruptcy?

9 A. No, it wasn't.

10 Q. How many times had you filed for
11 bankruptcy?

12 A. I believe once prior, if I can
13 recall right.

14 Q. what was your understanding
15 about what the bankruptcy fraud charges
16 were based on?

94979

17 A. Bankruptcy charges were based on
18 the fact that I had perjured myself on the
19 petition by using the wrong Social
20 Security number and failing to inform that
21 I had a checking account and failing to
22 inform that I had filed a previous
23 bankruptcy.

24 Q. Was that accurate? Each of
25 those were accurate?

□

344

1 WYNDER

2 A. All those charges were false.

3 Q. Did you have a wrong Social
4 Security number on there, on the petition?

5 A. Yes, there was a wrong Social
6 Security number on there.

7 Q. Why was the wrong Social
8 Security number on there?

9 A. Well, if we can clarify for the
10 record, if the State Police had taken a
11 statement from the lawyer who did my
12 bankruptcy, as they found out during the
13 hearing that it was done because of a
14 computer default, which means he was
15 supposed to change it and he did not,
16 which he testified to.

17 Secondly, the fact that -- what
18 relief would you get for putting in a
19 wrong Social Security number in

94979

20 bankruptcy?
21 The other ones were my checking
22 account that the State -- if the State
23 Police had done an investigation before
24 they preferred the charges against me,
25 they would have realized that I wrote a

□

345

1 WYNDER
2 check to Mr. Shoshano (phonetic), my
3 attorney, for the services rendered, which
4 proved I had a checking account.
5 Third, as far as not filing, not
6 disclosing that I had filed previously
7 another bankruptcy, if the State Police
8 had did an investigation and turned the
9 page over in the complaint on my
10 bankruptcy form, they would have found out
11 that my lawyer put in there, please state
12 previous attorney firm that was used for
13 your prior bankruptcy, which was there in
14 black and white, but as Lieutenant
15 Barbaria testified at my hearing, he never
16 did an investigation before charges were
17 preferred.

18 Q. Is it your contention that if
19 there were misstatements on your
20 bankruptcy petition, that those were the
21 result of your attorney?

22 A. I'm not stating it as a fact.

94979
23 As Mr. Shoshano testified to the
24 fact that he had a default program.

25 Q. When you say "a default

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346

1 WYNDER
2 program," what do you mean?
3 A. A default program is basically
4 set up for maybe 80 or 90 percent of
5 people who always answer one way and then
6 you just change it when it's yours. So in
7 this case, as Mr. Shoshano testified that
8 he put the wrong Social Security number
9 because he had not changed it from the
10 previous person that he was with, and he
11 also testified to the fact that why would
12 a bankruptcy attorney file paperwork on a
13 client with the wrong Social Security
14 number knowing that no relief would be
15 granted under another Social Security
16 number?

17 And secondly, he did state that
18 I paid him with a check.

19 And third, I did have a previous
20 attorney which was all in the bankruptcy
21 petition form, which, again, as I state
22 for the record, if Lieutenant Barbaria and
23 the State Police had followed their own
24 rules and regulations of 3.1 and did a
25 complete and thorough investigation, they

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□

347

1 WYNDER
2 would have realized this before they
3 preferred charges against me, but because
4 they were on a witch-hunt to target and
5 have me terminated because I was black,
6 the State Police refused to do any
7 investigations and just brought me up and
8 charges because, quote, as I was told by
9 PBA president, Al Welford, they had me
10 cold.

11 Q. what did you understand that to
12 mean?

13 A. They were going to fire me.
14 They had everything they needed. I was
15 guilty.

16 Q. Mr. Wynder, I just want to go
17 back. You had stated a couple of times
18 during this deposition that part of the
19 reason that you believe that certain
20 things were done to you by the State
21 Police was the fact that you had pointed
22 out discriminatory practices by the State
23 Police?

24 A. Correct.

25 Q. Can you indicate to me when and

□

348

94979

1 WYNDER

2 how you did that during your entire
3 career?

4 A. Well, again, as we stated, at
5 the Academy I made noises and questioned
6 why out of a 50-40-10 ratio, which the
7 State Police has to use to hire minorities
8 on this job, that they would pick the most
9 inferior minorities they could find and
10 put them in a position to fail and not
11 give them help -- and my memos -- when
12 that I stated to -- when I wrote there
13 were no minority instructors and that the
14 State Police, in my opinion, which was by
15 Captain Young at the Academy stated that I
16 was correct, and the fact that the State
17 Police did not have any black academic
18 instructors nor were they trying to find
19 any black academic instructors and I
20 brought that to their attention and they
21 rectified that problem by forcing me to do
22 it and then I believe right after that
23 they forced other -- they didn't force but
24 they did go out and look for black
25 academic instructors after I left.

349

1 WYNDER

2 Q. Can you tell me what else you
3 did other than what you've just testified
Page 125

94979

4 to to expose what you say are
5 discriminatory activities?

6 A. Well, that was -- that was the
7 main one. I put it in writing and I
8 contacted the EEOC, so, therefore, I was a
9 target of the New York State Police.

10 Q. Anything else other than what
11 you've testified to today regarding the
12 discriminatory activities?

13 MR. MERRITT: I have to object.
14 He has testified at length with regard to
15 the things that he did in yesterday's
16 deposition. He told you step by step all
17 the steps he did, and you are asking him
18 today, apparently, to clarify all those
19 things that he told you yesterday.

20 So if you clarify your question,
21 other than yesterday -- he did testify at
22 length about that same question and the
23 same answer.

24 MS. ODESSKY: Okay.

25 Q. Mr. Wynder, other than what

□

350

1 WYNDER
2 you've already testified to at this
3 deposition, which includes today and
4 yesterday, is there anything else?

5 A. As far as --

6 Q. As far as things that you did
Page 126

94979

7 during your entire career at the New York
8 State Police to speak about discriminatory
9 actions?

10 A. Yes. Everything that we spoke
11 about yesterday brought it to that point
12 where I had become a target of the State
13 Police.

14 Q. I'm going to ask you to turn
15 your attention to paragraph 115, which is
16 on page 27.

17 Do you have that?

18 A. Yes.

19 Q. That reads: "During the two-day
20 hearing held on January 27 and January 29,
21 1998, Defendant Jones obtained exculpatory
22 evidence from Sergeant Nohai,"
23 N-o-h-a-i -- I believe you have it spelled
24 in paragraph 117, N-o-h-a-i.

25 I believe that's the correct

351

1 WYNDER

2 spelling?

3 A. Yes.

4 Q. Did I read that accurately?

5 A. N-o-h-a-i.

6 Q. Did I read the paragraph
7 accurately?

8 A. Yes, you did.

9 Q. Now, this two-day hearing that
Page 127

94979

10 you're referring to on January 27 and 29,
11 1998 pertained to the charges filed on
12 December 27, 1997 regarding the bankruptcy
13 and the outside work, correct?

14 A. Correct.

15 Q. Who is Defendant Jones?

16 A. Defendant Jones was the
17 prosecutor for the New York State Police,
18 Investigator Robert Jones.

19 Q. When you said that he obtained
20 exculpatory evidence from Sergeant Nohai,
21 what are you referring to?

22 A. Well, prior to this hearing
23 stated here January 27 and January 29, my
24 attorney, Richard Merritt, requested
25 discovery which is part of my amendment

352

1 WYNDER
2 rights to due process and civil rights and
3 we were denied paperwork from the New York
4 State Police. And we went into this
5 hearing without any evidence or paperwork
6 to defend myself properly, and to the best
7 defense that I could possibly obtain to
8 maintain my job.

9 During this time one of the
10 sergeants was called up to -- let me
11 rephrase that.

12 Right before the hearing, I had
Page 128

94979

13 been given a package that was left in my
14 folder, unknown, unsigned. In it was
15 paperwork that stated that I had been
16 approved for outside employment.

17 Q. Where did you get that from?

18 A. As I repeat, I found it in my
19 mail folder at SP Hawthorne. No name,
20 nothing on it.

21 Q. Let me stop you there,
22 Mr. Wynder, for a moment.

23 In paragraph 115, you referred
24 to exculpatory evidence from Sergeant
25 Nohai.

353

1 WYNDER

2 Who is Sergeant Nohai?

3 A. He was my sergeant at New York
4 State Police, Hawthorne.

5 Q. What is the exculpatory evidence
6 that you're referring to in that
7 paragraph?

8 A. Outside employment.

9 Q. How do you know that Defendant
10 Jones obtained that evidence from Sergeant
11 Nohai?

12 A. Well, on January 27, we had to
13 have an adjournment and it was scheduled
14 for the 29th, and I went back to my
15 station, SP Hawthorne, and Sergeant Nohai

94979

16 was there and he said, "Hey, I was up in
17 Albany all day on the 27th, waiting to be
18 called and Defendant Captain Robert
19 Jones," I'm sorry, he's a captain, "failed
20 to call me. He didn't need me," he said.

21 I said, "Really?"

22 I said, "Why were you up
23 there?"

24 And he told me, he said, "Oh, I
25 had all the paperwork from your outside

354

1 WYNDER

2 employment," and I was being charged with
3 working outside my employment without
4 approval, when here's a sergeant who was
5 holding onto the information; and as a
6 matter of fact, I had requested that
7 paperwork because I knew that I had asked
8 for outside employment approval and they
9 told me they didn't have it. But here it
10 is, we had it.

11 Q. Now, did you eventually,
12 according to what you say in paragraph
13 117, you called Sergeant Nohai as a
14 witness or your attorney did as a witness
15 on your behalf, correct?

16 A. Correct.

17 Q. Sergeant Nohai in fact came
18 without evidence to the hearing?

94979

19 A. Yes. As is stated here, he did
20 come, he testified to it, that he was up
21 there with that package and later on in
22 the hearing, my attorney questioned and
23 put it on the record that Robert Jones was
24 withholding exculpatory evidence, to which
25 Jones replied, if I remember correctly,

355

1 WYNDER

2 that he was only going to offer this
3 evidence if it was brought up, which,
4 therefore, he had admitted that he knew
5 about the evidence and that he wasn't
6 going to call it unless we brought it up,
7 which we had to bring it up because he was
8 refusing to bring it up.

9 As a matter of fact, he was
10 never going to bring it up.

11 Q. I'm going to ask you to look at
12 paragraph 119. That reads as follows:

13 "As a result of the foregoing, plaintiff
14 was caused to suffer emotional trauma and
15 damages which eventually led to his
16 nervous breakdown and disability
17 retirement."

18 Going back to the beginning of
19 that paragraph, when you say, "As a result
20 of the foregoing," what are you referring
21 to there, "foregoing"? Are you referring

94979

22 to the hearing?

23 A. The foregoing, which meant the
24 hearing.

25 Now, I am still being prosecuted

□

356

1 WYNDER

2 by the State Police. They refused me my
3 back pay because I'm black, color of my
4 skin --

5 Q. Hold on, Mr. Wynder, because I
6 think you are misunderstanding again my
7 question.

8 My question is, I'm asking
9 specifically, when you say "the foregoing"
10 in paragraph 119, are you referring to the
11 hearing, that particular hearing held on
12 January 27 and 29th, 1998?

13 A. No.

14 Q. Are you referring to everything
15 that went before?

16 A. Everything in this complaint.

17 Q. Everything before that
18 paragraph?

19 A. Right.

20 Q. Now, I'm going to ask you to
21 look at paragraph 127. That's on page
22 29. It reads as follows: "During the
23 aforesaid hearing, Defendants Jones and
24 McMahon acted through his subordinates" --

94979

25 "acting through his subordinates, refused

357

1 WYNDER

2 to produce a material witness at the
3 hearing."

4 A. Correct.

5 Q. And going to paragraph 128, "The
6 witness, Mr. Gregory P. Schreffler
7 (phonetic), who is listed on
8 administrative charges against plaintiff
9 and was declared to be an employee of the
10 NYSP, signifying that Defendant McMahon
11 had control of the witness."

12 Did I read those two correctly?

13 A. Yes, you did.

14 Q. Can you explain to me why you
15 wanted Mr. Gregory P. Schreffler to
16 testify?

17 A. Yes, I can.

18 On December 27, 1997, when
19 charges were preferred against me, there
20 were two witnesses that were put against
21 me for these alleged crimes which were
22 Gregory Schreffler, and it was stated as
23 head of financial crimes unit and
24 Lieutenant Barbaria, Internal Affairs.

25 My right as a civil rights

94979

358

1 WYNDER

2 violation -- is the right to confront any
3 witnesses against me who brought these
4 charges. And on this day, after
5 Lieutenant Barbaria had finished
6 testifying, my attorney, Mr. Merritt,
7 requested -- well, I take that back.

8 The State Police said that they
9 rested their case, so Mr. Merritt
10 requested that, do they have any more
11 witnesses, they said no, and Mr. Merritt
12 stated that he wanted to call Gregory
13 Schreffler as a witness for the defense
14 for the fact that the State Police did not
15 want to produce him.

16 Q. Was Mr. Schreffler ultimately
17 allowed to testify?

18 A. Well, what happened after that
19 was we had vigorous and furious objections
20 from Robert Jones stating that Gregory
21 Schreffler, which to this day is
22 unbelievable, stated that he was
23 irrelevant to the case, knowing that it
24 was the State Police who put them on their
25 witness list and as a witness against me

359

1 WYNDER

94979

2 and then failed to produce him, and the
3 previous day, this was on the 29th, that
4 on the 27th, that his name had been
5 mentioned 27 times by Lieutenant Barbaria,
6 so Gregory Schreffler was a very, very
7 significant witness against me.

8 Q. Mr. Wynder, did Mr. Schreffler
9 end up testifying at the hearing?

10 A. At the hearing, police
11 officer -- not police officer, Arnold, who
12 presided on the hearing board --

13 Q. Maybe you misunderstood. That's
14 a yes or no answer that I'm looking for.

15 Did Mr. Schreffler end up
16 testifying at the administrative hearing?

17 A. Quote, Arnold and Jones stated
18 that he would not be produced because he
19 would divulge how the State Police does
20 their investigations.

21 Q. So the answer is to my question
22 is no, that he did not testify?

23 A. The answer to your question is
24 no, he did not, but I told you why he did
25 not testify.

□

360

1 WYNDER

2 Q. Was it an option for you, for
3 your attorney to call Mr. Schreffler to
4 testify?

94979

5 A. My civil rights -- I have a
6 right to call any witness that is
7 preferring any allegations against me, and
8 yes, it was our right to call him, which
9 was denied by the New York State Police to
10 call -- supposedly, Gregory Schreffler is
11 head of New York State Police Financial
12 Crimes Unit, which for the record there is
13 no New York State Police Financial Crimes
14 Unit, and, secondly, Gregory Schreffler is
15 a civilian, and rules and regs of the New
16 York State Police Manual State that no
17 civilian can conduct or participate in any
18 administrative charges or criminal charges
19 against a member of the New York State
20 Police.

21 Q. So is it your understanding that
22 Defendant Jones refused the request by
23 plaintiff to call Mr. Schreffler; is that
24 your understanding?

25 A. You are asking me did Robert

361

1 WYNDER

2 Jones purposely fail to call Gregory
3 Schreffler?

4 Q. No. I'm asking you, did Robert
5 Jones refuse a request by either yourself
6 or Mr. Merritt to call Gregory Schreffler
7 during this hearing?

94979

8 A. Yes, Mr. Jones refused to call
9 him himself and then denied my attorney
10 the privilege and the right to call
11 Gregory Schreffler.

12 Q. Did either you or your attorney
13 seek any further action once that request
14 was denied, either through State Police or
15 through court or any other agency?

16 A. I don't understand.

17 Q. You said that Mr. Jones denied
18 the request by you and your attorney to
19 call Mr. Schreffler, correct?

20 A. Yes.

21 Q. Did you or Mr. Merritt, acting
22 on your behalf, take any further action
23 with regard to that denial of the request?

24 A. Well, the action that my
25 attorney took right there was that he

□

362

1 WYNDER
2 objected and that he wanted to have a
3 telephone conference call to whoever was
4 in charge to have this witness produced,
5 where he was told by the hearing officer
6 who presided, which was Colonel Arnold,
7 that that wasn't going to happen and that
8 he refused -- again, as I stated before,
9 they refused to produce him based on the
10 fact that he would divulge how they did

94979

11 their investigation.

12 Q. Did you or your attorney seek
13 any court action to rectify the problem?

14 A. Well, in the middle of a
15 hearing, the State Police don't afford you
16 that liberty to adjourn and ask for
17 outside help, which we requested, which
18 was denied.

19 Q. I ask you to turn to paragraph
20 127 that reads, again, as follows:
21 "During the aforesaid hearing, Defendants
22 Jones and McMahon, acting through his
23 subordinates, refused to produce a
24 material witness at the hearing."

25 Did I read that correctly?

363

1 WYNDER

2 A. Yes.

3 Q. It's fair to say that
4 Superintendent McMahon was not present
5 himself at the hearing, correct?

6 A. Correct.

7 Q. Is it your understanding that,
8 again, you are saying that Mr. McMahon
9 acted through his subordinates, that
10 Defendant Jones was acting under the
11 orders of Superintendent McMahon?

12 A. Yes. Not only was Defendant
13 Jones acting under the order of McMahon,

94979

14 so was Colonel Arnold and the board that
15 was appointed by Superintendent McMahon.

16 Q. I'm going to ask you to look at
17 paragraph 130 which is on page 30, it
18 reads: "Two administrative hearings were
19 conducted by McMahon utilizing false
20 administrative charges."

21 And we just established that
22 Superintendent McMahon was not present
23 during these hearings, correct?

24 A. Correct, but --

25 Q. What did you mean when you say

364

1

WYNDER

2 that the hearings were conducted by
3 McMahon?

4 A. Well, it was conducted -- he had
5 to approve them. Every charge that has to
6 be signed has to be signed off by the
7 superintendent of the New York State
8 Police, which in this case, the first
9 one -- two administrative hearings -- the
10 first one was the charges of bankruptcy
11 fraud, which as we stated on the record
12 had the New York State Police did their
13 investigation would have found out that
14 they were false charges but they never
15 did, before they preferred the charges.

16 The fact that they withheld

94979
17 exculpatory evidence to the fact that I
18 did obtain approval outside and that I
19 never received any pay which proved that
20 they were false charges and, three, was
21 the second charges that were brought
22 against me was after, at my hearing, from
23 my statement, in reference to the first
24 charge on January 27 -- actually is, as I
25 go back, January 20, 1998, as I was forced

□
365

1 WYNDER
2 to give a statement to my first hearing,
3 Lieutenant Barbaria told me that my gun
4 was still listed in the computer as stolen
5 and he told me to take care of it.
6 Q. Mr. Wynder, I don't want you to
7 cut you short, but I think you are getting
8 again very far from my question.
9 My question was specifically in
10 paragraph 130, when you have there that
11 administrative hearings were conducted by
12 McMahon, I'm asking you, did you mean that
13 McMahon was personally conducting them or
14 that they were conducted under the
15 direction of Superintendent McMahon?
16 A. They were conducted under his
17 supervision, because everything is chain
18 of command. He has to follow direct
19 orders, and the fact that he signed off on

20 the charges. There can be no hearings
21 unless McMahon has thoroughly read
22 everything that's been done and signs off
23 on it.
24 So, yes, McMahon was the one who
25 appointed and conducted these false

□

366

1 WYNDER
2 administrative charges against me.
3 Q. I'm going to ask you to look at
4 paragraph 133. That reads: "Plaintiff
5 was denied copies of police records and
6 reports contained in his personnel file
7 which would have shown improper and
8 unlawful police conduct in their
9 investigation and in bringing false
10 charges against plaintiff."
11 Did I read that correctly?
12 A. Yes, you did.
13 Q. Were you aware that your
14 attorney, Mr. Merritt, was given the
15 opportunity to look at your personnel file
16 and to take copies of documents from your
17 personnel file; were you aware of that?
18 MR. MERRITT: Let's just clarify
19 this. What time frame are you talking
20 about?
21 MS. ODESSKY: My understanding,
22 Mr. Merritt, and correct me if I'm wrong,

94979
23 was that you were permitted, during the
24 hearing to --
25 MR. MERRITT: That's an absolute

367

1 WYNDER
2 falsehood. I was denied it in writing. I
3 was denied every time I made a request --
4 every request I made for information
5 before that hearing was denied me in every
6 way, shape and form. I was never given
7 any discovery and I was never allowed to
8 look at his personnel file.

9 The only time the personnel file
10 was allowed to be looked at was during a
11 workmen's Comp hearing, and I was only
12 given one-third of his file at that time
13 to look at it, all the rest was withheld
14 by the State Police.

15 So if you want to put a time
16 frame on your question. There was a
17 period of time when it was offered and it
18 was at the workmen's Comp hearing in 2002
19 and 2003 and they only produced one-third
20 of his file.

21 Q. I'm going to ask you to turn,
22 Mr. Wynder, to paragraph 140 on page 31.

23 A. Yes.

24 Q. That reads: "On January 27,
25 1998, Barbara issued a direct order to

94979

368

1 WYNDER
2 plaintiff to straighten out his missing
3 weapon problem," and I believe you began
4 to tell me about that before.

5 Was that during a conversation
6 you had with Lieutenant Barbaria?

7 A. It wasn't a conversation.

8 For the record, it was -- I was
9 ordered to give a statement on January 20,
10 1998 in reference to the complaint of
11 bankruptcy fraud and outside work.

12 At that time, after the hearing
13 was over, Lieutenant Barbaria stated --
14 before, I'm sorry, before, he stated to me
15 that, "when you went out on sick leave on
16 12/27/97 and Captain Spahl came and
17 retrieved your weapon and your shield,"
18 after running my gun, they found out that
19 my gun was still listed in the computer,
20 in NYSPIN, as stolen, and he told me that,
21 "if I was you, I would take care of it
22 and I'm giving you an order to take care
23 of it, because you cannot walk around with
24 your gun listed as stolen."

25 Q. Did you take action as a result

369

94979

1 WYNDER

2 of that?

3 A. On January 27, after the first
4 day of hearing had commenced, again,
5 Lieutenant Barbaria again stated to me,
6 "You still haven't taken care of your
7 gun. Take care of it." That's the last
8 time I'm going to ask you. On January 28,
9 I went to SP Newburgh where I attempted to
10 retrieve the information so that I could
11 call NYPD to have my gun taken out of the
12 system as stolen.

13 Q. Let me just back up a little
14 bit.

15 Were you ever assigned to SP
16 Newburgh as a trooper?

17 A. No.

18 Q. Why did you go to SP Newburgh on
19 that day?

20 A. I lived in Newburgh.

21 Q. Why did you not go to SP
22 Hawthorne where you were assigned?

23 A. Well, as a member of the New
24 York State Police, I have access to every
25 State facility in the State of New York.

□

370

1 WYNDER

2 Why would I drive an hour to SP
3 Hawthorne when I can handle what I needed
Page 144

94979

4 to handle at SP Newburgh, which was five
5 minutes from my house?

6 Q. When you arrived at SP Newburgh,
7 what did you do there?

8 A. I requested help in retrieving
9 my gun, which at that time I don't really
10 recall the specifics, I was heavily
11 sedated at the time, I was on Prozac, I
12 was stressed out, so I don't really
13 remember that whole period of time that I
14 was there.

15 Q. Do you recall at all whether you
16 yourself used a computer terminal, a
17 NYSPIN terminal, at SP Newburgh?

18 A. Well, again, as I said, I didn't
19 recall, but sitting through the hearing,
20 it was determined that I never used a
21 terminal, which was restated in testimony
22 and under oath by Sergeant Kreplin
23 (phonetic) who stated I never sat down at
24 the terminal, I never used it. I never
25 logged onto the computer.

□

371

1 WYNDER

2 And the hearing, which after I
3 was brought up on charges again, which was
4 a trap by the State Police, I find it
5 ironic that after Barbara sent me to have
6 my gun taken care of, that was the same

94979

7 day a new charge -- charges were preferred
8 and instigated against me, on January 28,
9 1998, while I was still in the middle of
10 other charges at the other hearing.

11 Q. Can you tell me, Mr. Wynder,
12 everything that you recall doing at SP
13 Newburgh on that day when you went to try
14 to straighten out the gun problem?

15 A. The only thing I can remember is
16 I went to the station to retrieve
17 information to find out how I could get my
18 gun taken out of the system. That's all I
19 can recall at that time. I was heavily
20 sedated, I was upset, I was in the middle
21 of a hearing already, I was stressed out
22 already. So I really don't recall. I can
23 only tell you by what was recalled in
24 refreshing my memory as I sat through the
25 hearings and what happened that day

□

372

1 WYNDER
2 through the hearings was apparently I was
3 brought -- I came in and I spoke to an
4 investigator who stated that --

5 Q. Who was that? I'm sorry. Are
6 you talking about Josh Keats?

7 A. Edward Martinez.

8 Q. Do you recall what you said to
9 Martinez?

94979

10 A. No, I don't recall, but what was
11 stated at the hearing was that he said
12 that I asked him, "Could I use the
13 computer to run my gun?" And he told me
14 that I could not use the NYSPIN and that I
15 had to leave the station.

16 I find out at the hearing, we
17 testified that that was wrong, because as
18 a New York State trooper, I was certified
19 to use the NYSPIN and there's no reason
20 for anyone to ever tell a trooper or a
21 member that he cannot use a NYSPIN if he's
22 certified. So where did that come from?
23 I don't know to this day.

24 I believe that was a false
25 charge that the State Police used to bring

□

373

1 WYNDER

2 me up on charges.

3 Q. I'm going to ask you to look at
4 paragraph 142 and you say that, "Keats
5 testified at an administrative hearing
6 held on May 11, 1999, that he supplied a
7 false sworn statement to NYSP prior to
8 administrative charges being issued
9 against plaintiff."

10 Now, the hearing you're
11 referring to is the hearing that you had
12 regarding the charges of misusing the

94979

13 NYSPIN system?

14 A. Correct.

15 Q. Who is Keats? Is he a trooper?

16 A. Yes. Josh Keats, to my
17 recollection, and at the hearing
18 testified -- well, prior to that, as we
19 prepped for the hearing, I didn't recall,
20 so I didn't recall by whatever documents
21 we were able to retrieve or whatever, but
22 Keats had testified in a sworn statement
23 that he got up from his NYSPIN terminal
24 and I sat down and I used his terminal in
25 order to pull up what I needed for my gun

□

374

1 WYNDER

2 charges.

3 Q. Did you do that?

4 A. Did I do that? As I testified
5 before, I don't remember, but we have
6 sworn testimony from a Sergeant Kreplin
7 that I never sat at the terminal and I
8 never at any time retrieved any
9 information from the NYSPIN under someone
10 else's NYSPIN number.

11 And at this time it was Josh
12 Keats who testified that I walked away
13 from it, but at the hearing, it was
14 revealed that it wasn't Josh Keats, there
15 was another trooper who was sitting on the
Page 148

94979

16 computer using Keats' log-in number,
17 running the information that was supplied
18 to me, and, also, it was revealed at the
19 hearing that Sergeant Kreplin said that
20 this was a -- how can I put it? This was
21 a normal practice that was practiced at SP
22 Newburgh, that all the members used each
23 other's PIN numbers when they were on a
24 terminal, for the same charge that they
25 were bringing up on me.

□

375

1 WYNDER

2 Also, I found out everybody in
3 Newburgh was white, and I didn't even use
4 the NYSPIN computer and I was brought up
5 on charges.

6 Q. Is there any document that shows
7 whether or not you used the NYSPIN
8 terminal that day?

9 A. There is no documents that state
10 that I ever used the NYSPIN. The NYSPIN
11 documents with my information on it was
12 run under Keats' log-on number.

13 Q. As you sit here today, do you
14 have a recollection of asking Trooper
15 Keats to run that information regarding
16 your gun for you?

17 A. No, I don't recall. As I
18 stated, I was very sedated, I was on
Page 149

94979

19 Prozac.

20 You got to remember that was the
21 date in between a hearing to have me
22 fired.

23 Q. Do you have any recollection as
24 to whether when you went to SP Newburgh to
25 try to straighten out the gun problem, did

□

376

1 WYNDER

2 you ask anyone else, anyone at SP
3 Newburgh, to run that gun information for
4 you on the NYSPIN terminal?

5 A. Again, as I stated, but from the
6 hearing, it was stated that I asked
7 Investigator Martinez to help me.
8 Investigator Martinez again said that --
9 which he had no authority and no command
10 over me, said and told the State Police
11 that he had told me to leave the station
12 and that I couldn't use the NYSPIN, which
13 was illegal. As long as you are
14 certified, you can use a NYSPIN.

15 He also stated that I was out on
16 sick leave and that was the reason why I
17 couldn't use the terminal.

18 Well, State Police policies
19 rules and regs state that any member, as
20 long as he's not suspended, has a right
21 and access to anything in the State

94979

22 Police, and also on that date, again, as I
23 told you, at this hearing that was held on
24 May 11, 1999, documented proof that six
25 white members used the NYSPIN under Keats'

377

1 WYNDER

2 name and they admitted to it. Sergeant
3 Kreplin admitted to it.

4 Sergeant Kreplin admitted that I
5 never sat down at the terminal and I never
6 used the NYSPIN.

7 As a matter of fact, the State
8 Police tried to change their charges
9 against me from using the NYSPIN while
10 logged on underneath somebody to causing
11 it to be used under -- so they even
12 admitted that I never sat at the NYSPIN,
13 but I was still brought up on charges.

14 Q. Mr. Wynder, as you sit here
15 today, the only recollection you have of
16 the date that you went to SP Newburgh is
17 the fact that you went there intending to
18 straighten out the gun charge?

19 A. Correct.

20 Q. And you don't have any
21 recollection as you sit here today of what
22 you did there or who you spoke to?

23 A. Not really. I couldn't recall.
24 I didn't know what I said. Again, as I

94979

25 stated to you, this was January 28, 1998,

378

1 WYNDER

2 right in the middle of the hearings that's
3 already on the record that happened on the
4 27th of 1998 and 29th of January in trying
5 to have me terminated from my job, so at
6 this point in my time I was heavily
7 sedated again. I really don't recall too
8 much that happened.

9 All this that we testified to
10 hear is actual testimony and proof that I
11 never, ever used the NYSPIN, never used it
12 while I was logged on under somebody
13 else's name.

14 As a matter of fact, it was
15 brought to the attention at this hearing
16 that six other white members used it, and
17 we brought that up at the trial and we
18 were quoted -- we were stated that that's
19 not what we're here for, so I know for a
20 fact that I was being targeted because of
21 the color of my skin, and they were trying
22 to make my life as miserable as they can
23 and my working environment --

24 Q. I just want to try to get direct
25 answers to my questions so that we can

94979

379

1 WYNDER

2 wrap this up at some point. I don't want
3 to cut you short with your answers, but I
4 believe that you've answered the
5 question.

6 If you have something that you
7 want to add, I'll give you the opportunity
8 at the end of my questions to add that.
9 okay?

10 A. Can I just -- so I don't have to
11 come back as to that answer, another
12 reason why I know that I was a target of
13 the State Police because I was black was
14 the fact that Kevin Flynn -- I believe you
15 have -- you have in your notes, Kevin
16 Flynn actually testified that as a white
17 trooper, he actually used the NYSPIN while
18 it was logged on under Keats' name. And
19 he did not -- he was never brought up on
20 charges, and the reason why he wasn't
21 brought up on charges is because they used
22 him as a witness against me.

23 Now, if rules and regs state you
24 cannot use the terminal while it's logged
25 on somebody else, but because the State

□

380

1 WYNDER

94979

2 Police wanted me off this job, they used
3 somebody who had committed a violation of
4 the rules and regs against me.

5 Also, to answer your question,
6 Keats did testify that he had supplied a
7 false statement on the hearing, on the
8 stand, under oath, my attorney asked him,
9 what you have today to say is the truth --
10 what you said on that statement that was
11 taken right after this incident, I believe
12 he replied that no, what I have to say
13 today on the stand is true, what I said on
14 that statement was false and what I have
15 to say today is the truth.

16 Mr. Merritt, my attorney, asked
17 him, "Trooper, are you aware that you have
18 said that you committed perjury?"

19 And his answer was, "Yes."

20 Q. Thank you, Mr. Wynder.

21 Kevin Flynn, when he used the
22 NYSPIN, is it true that his use of the
23 NYSPIN was in connection with looking up
24 information regarding your gun on that day
25 in SP Newburgh; is that correct?

381

1 WYNDER

2 A. From the statement and the
3 evidence, yes.

4 Q. Did you know Kevin Flynn prior

94979

5 to the date that you went to SP Newburgh
6 to straighten out your gun?

7 A. No.

8 Q. SP Newburgh is about how far
9 from where you were living? You said you
10 were living in Newburgh at the time?

11 A. Correct. It was about five to
12 six minutes.

13 Q. That was five to six minutes by
14 car?

15 A. Correct.

16 Q. Is that how you got there that
17 day, by car?

18 A. My wife drove me, or a friend.
19 I didn't really drive that day. I wasn't
20 really driving too much. I didn't have
21 any money.

22 Q. I'm going to ask you to look at
23 paragraph 148 which reads: "On January 9,
24 1998, under orders from McMahon, a
25 teletype was released to every New York

382

1 WYNDER
2 State trooper revealing plaintiff's sick
3 leave and type of illness, in violation of
4 both contractual rights under the CBA and
5 federal right to privacy."

6 Did I read that correctly?

7 A. Yes, you did.

8 Q. What teletype are you referring
9 to?

10 A. On December 27, 1997, I signed
11 myself out of the blotter as sick and
12 unable to perform my duties.

13 Right after that, a File 15 or
14 25 was sent, I don't recall, stating that
15 I was out on mental stress.

16 Q. who was that sent to?

17 A. Every station.

18 Q. Did you see a copy of this?

19 A. Yes.

20 Q. Do you have a copy of it?

21 A. Yes, it was provided to you.

22 You should have a copy.

23 Q. I'm going to ask you,
24 Mr. Wynder, specifically, during to the
25 very last page where you have monetary

1 WYNDER
2 figures there for each of the claims, can
3 you tell me how those monetary figures
4 were arrived at, if you know?

5 A. I figured that the fact that I
6 was -- so much suffering and the pain and
7 damages that this job brought me, I lost a
8 promising career, which I can tell you
9 right now was worth millions.
10 Psychological damages that I suffered and

94979

11 all of the illegal violations that the
12 State Police has done and the fact that
13 this needs to be brought to the attention
14 of the -- for how the State Police, if
15 they did this to me as a member of the
16 State Police, what makes you think -- what
17 do they think they are doing to
18 civilians?

19 I worked for them and they broke
20 every rule and regulation and laws that
21 they could find in order to get me off
22 this job and have me arrested.

23 Q. But specifically, Mr. Wynder,
24 how did you arrive at those sums,
25 specifically for the first one, you have

□

384

1 WYNDER

2 \$6,500,000; second one, 5,500,000?

3 Is there any particular way that
4 you arrived at that calculation?

5 A. Well, I just figured out, as
6 much damage as they all did to me, I
7 figured that they should pay dearly, so,
8 unfortunately, today, this money would
9 hold me over for what they did to me and
10 what they caused me. I mean my
11 character -- defamation of character.

12 I'm known to every police agency
13 out there, FBI, Department of Justice,

94979

14 U.S. Attorney, District Attorney. I mean
15 this was all stated in Lieutenant
16 Barbara's sworn testimony that he
17 contacted everybody in regards to Trooper
18 Wynder.

19 So yes, these numbers were made
20 from my own figures as to what I think
21 each of these defendants should pay for
22 what they conspired to do to me.

23 Q. Let me ask you, regarding your
24 claim for, you said, psychological
25 injuries, prior to the time that you first

385

1 WYNDER
2 saw Dr. Butts, did you ever experience any
3 psychological problems before that?

4 A. No.

5 Q. You said that back in 1998, when
6 you went to SP Newburgh to check out the
7 gun, you were very out of it -- I may not
8 be quoting you correctly, but you said
9 that you were taking medication at that
10 time?

11 A. Yes, I was.

12 Q. What medication were you taking
13 at that time, if you can recall?

14 A. I believe I told you that:
15 Prozac, which is why I was driven that
16 day.

94979

17 Q. When did you stop taking Prozac?

18 A. Sometime after I received my
19 full disability and I came off the job, I
20 went to sedatives instead of Prozac.

21 Q. I believe the sedative you
22 mentioned yesterday was Buford (phonetic)?

23 A. Yes. And there may be some
24 others from Dr. Butts. I believe we gave
25 you a list.

□

386

1 WYNDER

2 Q. When you first saw Dr. Butts,
3 how often did you see him?

4 A. I saw him almost every two
5 weeks. Whenever -- and if I needed to see
6 him more -- at that time I was seeing him
7 almost constantly because of the stress
8 and the pressure of still being
9 associated, in my opinion, with a racist
10 organization like the State Police, and I
11 was very upset, and till this day I still
12 see Dr. Butts when I'm stressed; and I
13 still have to see Dr. Butts because I
14 continue to be targeted by the State
15 Police.

16 I have retired with a permanent
17 disability, awarded a full disability, but
18 yet still I have been denied a shield,
19 retired shield, a retired ID, which is

94979
20 given to all retired members, but of
21 course because I'm black and I have said
22 the State Police was racist, I was denied
23 that.
24 I have been awarded workers'
25 compensation, which they have stated that

387

1 WYNDER
2 I was unlawfully and illegally targeted by
3 State Police which caused my disability
4 and I'm still owed over \$30,000 in back
5 pay that everyone is aware, even workers'
6 compensation.
7 So yes, I still see the State --
8 I still see Dr. Butts, as far as my
9 psychological condition, and, also, the
10 fact that I am still a target of the State
11 Police, because the charges against me for
12 murder and drugs has never been founded,
13 unfounded or closed, so, therefore, in my
14 sight, the State Police still thinks that
15 I did that murder in California and that
16 I'm a drug dealer.

17 Q. Mr. Wynder, what specific
18 symptoms do you have of the stress that
19 you allege you have? What physical
20 symptoms do you have?

21 A. Well, fatigue, sometimes I can't
22 keep focused, I have a very low tolerance

94979
23 now for misjustice that's done. I also
24 have nightmares. I have work stress. I
25 mean at The wiz, I had to leave for over a

1

388

1 WYNDER
2 month because I was so stressed out by all
3 of the stuff that was still going on with
4 the State Police. Even now I have ups and
5 downs now to the fact that it's been six
6 years and I am still trying to figure out
7 how I filed a complaint in federal court
8 six years ago and the State Police has
9 failed to answer, which shows me that
10 there is racism out there and the system
11 is corrupt and the fact that I'm still
12 paying for it. I thought I would go to
13 the federal government and get
14 satisfaction, but, apparently, the State
15 Police is very powerful, so they can do
16 illegal things.

17 I do know -- I'm well versed on
18 the law and it states that when you file a
19 complaint, notice of pleadings is all you
20 need. I had a bias judge tell me on the
21 stand that I don't believe the State
22 Police would do this to you because you
23 are black --

24 Q. Mr. Wynder, all I asked you
25 about at this point was your physical

94979

389

1 WYNDER
2 symptoms, not about the biased judge.
3 A. My symptoms are still going on.
4 Q. If this matter were to go to
5 trial, who will your witnesses be?
6 A. I haven't determined that.
7 Q. So as of today, you cannot tell
8 me the name of any individual who you
9 intend to call at a trial?
10 A. Well, due --
11 MR. MERRITT: I'm going to
12 object to this line of questioning
13 entirely. This case is not scheduled for
14 trial. We have no -- at this point we
15 have given you 26 discovery, which is all
16 we're required to do, there's a list of
17 witnesses with the 26 discovery, and until
18 you answer the complaint, you are not
19 entitled to anymore discovery.
20 MS. ODESSKY: I think I'm
21 entitled to find out who the witnesses
22 will be --
23 MR. MERRITT: You are --
24 MS. ODESSKY: You are cutting me
25 off.

390

94979

1 WYNDER

2 You accused me of cutting you
3 off several times. You haven't let me
4 speak. I'm just answering you.

5 I believe I am entitled to know
6 who the witnesses are and I will leave a
7 space for that and I will continue my
8 demand to know who the witnesses are if we
9 go to trial, and I also believe I'm
10 entitled to ask about other lawsuits that
11 Mr. Wynder has brought and I will put that
12 in writing, and if you deny that request,
13 then we'll take it up with the judge.

14 I have nothing further. Thank
15 you.

16 Insert

17 MR. MERRITT: I'm not through,
18 since you carried on as far as you did.

19 MS. ODESSKY: I didn't carry on,
20 and I really object to your
21 mischaracterization of the way that I have
22 been conducting this deposition.

23 You allowed your client to
24 basically answer my questions and go
25 beyond. I did not cut him off. I tried

□

391

1 WYNDER

2 my best to listen to his statements,
3 which, frankly in large part had little to

94979

4 do with my questions, and I believe I have
5 been extremely patient; and I think that
6 you have been mischaracterizing what I've
7 said throughout this deposition.

8 If you have something to say on
9 the record, please put it on now.

10 MR. MERRITT: Thank you.

11 EXAMINATION BY

12 MR. MERRITT:

13 Q. Was there a time when the New
14 York State and Local Police and Fire
15 Retirement System granted you a full and
16 complete disability retirement?

17 A. Yes, there was.

18 Q. Was it stated why that full
19 disability retirement was granted to you
20 by the Police and Fire Retirement System?

21 A. No, all they said that I was
22 permanently incapacitated from the
23 performance of my duties, and it was
24 alleged that an incident occurred on a
25 specified day and date -- has received

□

392

1 WYNDER

2 their consideration.

3 Q. I show you what is labeled the
4 New York State and Local Retirement
5 System, signed by a Peter J. Buckley.

6 Is this the only correspondence
Page 164

94979

7 you ever received --

8 MS. ODESSKY: Can I see that?

9 MR. MERRITT: You've seen it but
10 I'm going to ask him the question.

11 MS. ODESSKY: I think during the
12 deposition I'm entitled to see that
13 document. I'm sure I've seen it within
14 hundreds of other documents, but if you
15 are going to ask him to look at it, I
16 believe I should have a copy of it, as
17 well.

18 MR. MERRITT: You do have a
19 copy.

20 MS. ODESSKY: Yes, I would like
21 to see it right now.

22 MR. MERRITT: I'm going to
23 produce a copy to you just as soon as you
24 copy it on your machine.

25 MS. ODESSKY: I think before he

□

393

1 WYNDER

2 answers the question I would like to see
3 the document, and perhaps I might have an
4 objection to it.

5 So I think a common courtesy of
6 conducting deposition, I should see the
7 document while you are showing it to the
8 witness.

9 MR. MERRITT: Then the documents
Page 165

94979

10 that you marked with the court reporter, A
11 B, C and D, which you didn't provide me
12 with until today, you are saying that you
13 should have produced every one of those,
14 and I should have examined them before you
15 asked questions?

16 MS. ODESSKY: You have them all.

17 MR. MERRITT: Would you like to
18 see the document? Why don't you take a
19 look at this document?

20 MS. ODESSKY: Yes, I will.

21 Thank you.

22 MR. MERRITT: You are more than
23 welcome. Tell me you haven't seen it
24 before.

25 MS. ODESSKY: I didn't say I

□

394

1 WYNDER

2 haven't seen it.

3 Can I finish? All I said,
4 Mr. Merritt, was I need to see it before
5 you ask the witness about it.

6 MR. MERRITT: Let the record
7 reflect that that particular document has
8 been an exhibit in at least four motions
9 that have already been applied for by
10 Miss Odessky. She has made three motions
11 on 12(b)6 --

12 MS. ODESSKY: Yes, I see that.

94979

13 MR. MERRITT: She's had an
14 opportunity to read the document and look
15 at it.

16 MS. ODESSKY: Until you showed
17 it to me now, Mr. Merritt, I didn't know
18 which of the hundreds of documents that
19 are in this case you're referring to.

20 Now I have seen it and you can
21 show it to the witness.

22 MR. MERRITT: Thank you.

23 BY MR. MERRITT:

24 Q. Mr. Wynder, that document which
25 I showed you, which is signed by Peter J.

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395

1 WYNDER
2 Buckley, is that the only correspondence
3 that you ever had from the State Police
4 declaring your disability?

5 A. Correct.

6 MR. MERRITT: That's all I
7 have. Thank you very much.

8 Let the record reflect that
9 Miss Odessky has stated today that she
10 does not have a witness to produce and she
11 has adjourned the depositions for her
12 witnesses at least three times and that we
13 also have a court ordered letter and it
14 was directed to Magistrate Pollack, dated
15 May 8, 2005, which Magistrate Pollack

94979

16 endorsed and signed so ordered that the
17 following witnesses would be produced and
18 the dates listed and I will read now are
19 James McMahon, March 17, 2005; David
20 Spahl, March 18, 2005; Robert Jones, March
21 24, 2005; Louis Barbaria, March 25, 2005;
22 Craig Masterson, March 28, 2005, and Josh
23 Keats, March 31, 2005.

24 Miss Odessky stated today she
25 will not produce those witnesses.

396

1 WYNDER

2 MS. ODESSKY: Just for the
3 record, Mr. Merritt is well aware that
4 that schedule had been changed
5 subsequently to its being issued, it had
6 been changed during the conference.

7 It was my understanding that we
8 were to get through the deposition of
9 Mr. Wynder, which we have just concluded
10 today.

11 I have been attempting,
12 Mr. Merritt, to get the witnesses to be
13 deposed during the month of August, but,
14 unfortunately, due to vacation schedules,
15 including my own schedule, which includes
16 my being out of town from August 22 and
17 returning September 6, I have been unable
18 to do that.

94979

19 I'm certainly willing and able
20 to schedule witnesses in the week
21 containing Labor Day, from September 6 on,
22 and I'm willing to work with Mr. Merritt
23 to schedule those witnesses and go forward
24 with their depositions.

25 MR. MERRITT: Miss Odessky,

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397

1 WYNDER
2 you'll have to give me specific dates that
3 you are going to produce witnesses,
4 because you have adjourned them and made
5 false statements to the court and false
6 statements about that order. That order
7 was never altered by any magistrate or any
8 judge and you know it was never altered.

9 You were required to produce
10 those witnesses, you have failed to do so
11 from day one, and you still cannot give me
12 a date certain for the production of any
13 of your witnesses in this case; and until
14 you can, I will not make any deals with
15 you or work with you. You must give me
16 dates.

17 MS. ODESSKY: Mr. Merritt, do
18 you have a calendar with you? If you have
19 a calendar, I'm willing to settle on dates
20 with you and I will call you back and let
21 you know what witnesses we will have on

94979

22 which of those dates, but you need to tell
23 me dates that you will be available.

24 MR. MERRITT: You give me the
25 dates that you have available, you write

398

1 WYNDER

2 them in a letter to me, you address it to
3 the magistrate and get approval, the same
4 way I've been required to do up until
5 now. I got my letter approved and signed
6 by the magistrate.

7 MS. ODESSKY: That schedule you
8 know full well, Mr. Merritt, was altered
9 and there was a conference with the judge
10 about that, and, also, I don't appreciate
11 you saying on the record that I made false
12 statements. That's absolutely incorrect.

13 I'll send it to you in a letter
14 and then we can discuss it.

15 MR. MERRITT: The facts are,
16 Miss Odessky, that you not only have made
17 false statements to me, you lied to a
18 Federal District Court judge when you said
19 you had permission to file a late motion.

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WYNDER

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MS. ODESSKY: That's not on the

3

record. If you want to totally

4

misconstrue the record, that's fine. But

5

this deposition is at an end.

6

MR. MERRITT: Thank you.

7

(Time noted: 2:50 p.m.)

8

9

10

11

12

13

KENNETH N. WYNDER, JR.

14

15 subscribed and sworn to before me

16

this day of , 2005

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C E R T I F I C A T I O N

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6

I, TAMMY O'BERG, a Shorthand

7

Reporter and a Notary Public, do hereby

8

certify that the foregoing witness,

9

KENNETH N. WYNDER, JR., was duly sworn on

10

the date indicated, and that the foregoing

11

is a true and accurate transcription of my

12

stenographic notes.

13

I further certify that I am not

14

employed by nor related to any party to

15

this action.

16

17

18

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21

22

TAMMY O'BERG

23

24

25

□

401

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2	94979 E X H I B I T S		
3			
4	DEFENDANTS'		
5	EXHIBIT	DESCRIPTION	PAGE
6			
7			
8	D	Charge of discrimination	220
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

402

1		
2	EXAMINATION BY	PAGE
3		
4		

5	MS. ODESSKY	94979	213
6			
7			
8	MR. MERRITT		391
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

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403

1				
2		LITIGATION SUPPORT INDEX		
3				
4				
5		DIRECTION TO WITNESS NOT TO ANSWER		
6	Page	Line	Page	Line
7				

94979

8

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10

REQUEST FOR PRODUCTION OF DOCUMENTS

11

Page	Line	Page	Line
------	------	------	------

12

13

14

15

INFORMATION TO BE FURNISHED

16

Page	Line	Page	Line
------	------	------	------

17

233	15	389	20
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18

19

QUESTIONS MARKED FOR A RULING

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Page	Line	Page	Line
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21

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